

6-25-2010

Williams v. Blue Cross of Idaho Supplemental Agency's Record Dckt. 37623

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BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

PATRICK W. WILLIAMS,
Claimant/Appellant,

v.

BLUE CROSS OF IDAHO,
Defendant/Respondent.

LAW CLERK

SUPREME COURT NO. 37623

**SUPPLEMENTAL
AGENCY'S RECORD**

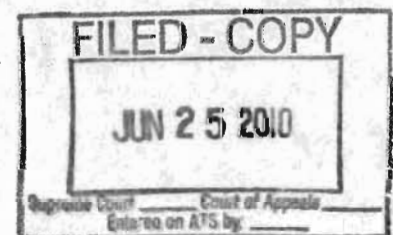
BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

Attorney for Appellant:

JOSEPH JARZABEK
PO BOX 1049
SANDPOINT ID 83864

Attorney for Respondent:

TIMOTHY WALTON
PO BOX 1069
BOISE ID 83701



37623

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"SUPPLEMENTAL" LIST OF EXHIBITS

Claimant/Appellant's Exhibits:

None

Defendant/Respondent's Exhibits:

None

Additional Documents:

See, Respondent's Request for Additional Record

1. No. 25, Response Brief of Blue Cross of Idaho to (Renewed) Petition for Declaratory Relief, filed with the Industrial Commission on or about 10/14/09.
2. No. 26, Affidavit of Timothy C. Walton in support of Blue Cross of Idaho's (Response) Brief to (Renewed) Petition for Declaratory Relief and Exhibits 1, 2, and 3 thereto, filed with the Industrial Commission on or about 10/14/09.
3. No. 27, Affidavit of Debbie Lowe in Support of Blue Cross of Idaho's (Response) Brief to (Renewed) Petition for Declaratory Relief and Exhibits A – G thereto, filed with the Industrial Commission on or about 10/14/09.
4. No. 28, Petitioner/Appellant's "Petitioner's Responsive Brief" (to the opening brief of Respondent re: Renewed Petition for Declaratory Relief), filed with the Industrial Commission on or about 11/5/09.
5. No. 29, Reply Brief of Blue Cross of Idaho to (Renewed) Petition for Declaratory Relief, filed with the Industrial Commission on or about 11/12/09.

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FILED
JUL - 9 2008
INDUSTRIAL COMMISSION

BEFORE THE INDUSTRIAL COMMISSION, STATE OF IDAHO

PATRICK W. WILLIAMS,)	
	)	I.C. No. 2006-509079
Petitioner,)	
	)	MOTION FOR ISSUANCE OF A
-vs-	)	SUBPOENA
)	
BLUE CROSS OF IDAHO,)	
)	
<u>Respondent.</u>)	

Comes now the above named Petitioner, by and through his attorney, Joseph Jarzabek, and hereby requests this Commission to issue a subpoena duces tecum directed to Timothy C. Walton, Attorney at Law, directing him to appear at a date and time convenient to the parties in this matter to give testimony by oral deposition. Upon approval of this motion Petitioner will provide a subpoena setting forth the items to be produced by Timothy C. Walton at his deposition.

MOTION FOR ISSUANCE OF
A SUBPOENA

DATED this 2nd day of July, 2008.



JOSEPH JARZABEK


CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing, was mailed, by regular mail, postage paid, addressed to:

Ronald D. Coston
State Insurance Fund
P.O. Box 83720
Boise, ID 83720-0044

Timothy C. Walton
Chasan & Walton, LLC
P.O. Box 1069
Boise, Idaho 83701

on this 2nd day of July, 2008.



RESPONDENT'S REQUEST FOR ADDITIONAL RECORD

No. 2, *See*, Agency's Record, p. 51

RESPONDENT'S REQUEST FOR ADDITIONAL RECORD

No. 3, *See*, Agency's Record, p. 51

RESPONDENT'S REQUEST FOR ADDITIONAL RECORD

No. 4, *See*, Agency's Record, p. 58

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Attorneys for Respondent

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INDUSTRIAL COMMISSION

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

PATRICK W. WILLIAMS,	)	I.C. No. 2006-509079
)	
Petitioner,	)	Objection to Motion for Issuance of
	)	Subpoena/Motion to Quash
vs.)	
)	
BLUE CROSS OF IDAHO,)	
)	
Respondent.)	

Petitioner's counsel herein has made a motion to the Idaho Industrial Commission to issue a subpoena to compel Timothy C. Walton, counsel for Respondent in the above captioned matter, to testify at deposition.

Blue Cross of Idaho objects to said motion and requests that the Industrial Commission deny Petitioner's motion for issuance of the subpoena motion; if the subpoena has been issued, Blue Cross requests that the subpoena be quashed. This is an action for declaratory relief to determine whether Blue Cross is entitled to be re-paid medical benefits it has paid to or on behalf of Mr. Williams for

treatment of the industrial injury sustained by Mr. Williams on or about April 11, 2006.

There is no dispute that Mr. Williams acknowledges he was injured on said date and that he incurred medical bills for treatment of that injury.

Blue Cross believes it has paid benefits for treatment of that injury. Pursuant to the insurance policy, Blue Cross is entitled to subrogation, reimbursement, an equitable lien, and/or a constructive trust with respect to any moneys recovered by Mr. Williams for that injury, to the extent Blue Cross paid medical benefits for treatment of that injury. This will be the issue for the Industrial Commission to decide in this Declaratory Judgment action.

Petitioner's subpoena of Respondent's attorney to give deposition testimony is entirely inappropriate.

Petitioner has made absolutely no attempt to conduct discovery in this case by a less intrusive means, such as via interrogatories or requests for production.

While Petitioner does not disclose the areas of inquiry to be made at deposition, it would appear that the subpoena is being used to harass counsel.

The compelling of testimony from Blue Cross' counsel will likely invade the attorney-client privilege.

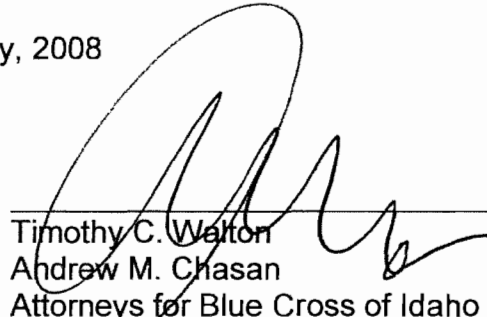
Further, by attempting to compel counsel to testify, Petitioner seeks to make counsel a witness in the proceeding, thereby potentially depriving Blue Cross of the attorney of its choice in this matter.

Finally, from a review of Petitioner's petition, it would appear that Petitioner is seeking to address issues that are not relevant to the issue of whether Blue Cross' rights of subrogation and/or reimbursement require Petitioner to reimburse Blue Cross for medical benefits paid by Blue Cross related to treatment of the industrial injury.

Respondent objects to the subpoena on the grounds that it is unreasonable, oppressive, requires disclosure of privileged or other protected matter and subjects counsel and Blue Cross to undue burden, in violation of the standards set forth in Idaho Rule of Civil Procedure 45(d).

Blue Cross therefore requests that Petitioner's motion for issuance of a subpoena be denied, and in the event that a subpoena has been issued, that the subpoena be quashed.

Dated this 10~~th~~ day of July, 2008



Timothy C. Walton
Andrew M. Chasan
Attorneys for Blue Cross of Idaho

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 10th day of July, 2008, a true and correct copy of the above and foregoing document was delivered as indicated below to:

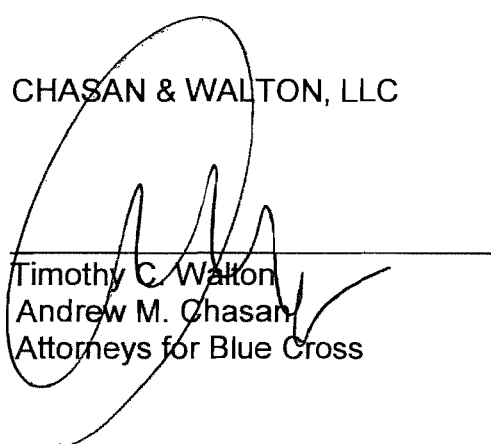
Ronald D. Coston
State Insurance Fund
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Boise, ID 83720-0044

☒ U.S. Mail
☐ Hand Delivery
☐ Overnight Courier
☐ Facsimile No.

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Elsaesser Harzabek Anderson
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☐ Overnight Courier
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CHASAN & WALTON, LLC



Timothy C. Walton
Andrew M. Chasan
Attorneys for Blue Cross

RESPONDENT'S REQUEST FOR ADDITIONAL RECORD

No. 6, See, Agency's Record, p. 84

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INDUSTRIAL COMMISSION

BEFORE THE INDUSTRIAL COMMISSION, STATE OF IDAHO

PATRICK W. WILLIAMS,)	
	)	I.C. No. 2006-509079
Petitioner,)	
	)	REPLY TO RESPONDENT'S
-vs-	)	OBJECTION TO MOTION FOR
	)	ISSUANCE OF SUBPOENA/MOTION
BLUE CROSS OF IDAHO,	)	TO QUASH AND MEMORANDUM
	)	IN SUPPORT THEREOF
<u>Respondent.</u>)	

Comes now the above named petitioner, Patrick W. Williams, by and through his attorneys, Joseph Jarzabek and James S. Macdonald, of the law firm of ELSAESSER JARZABEK ANDERSON MARKS ELLIOTT & McHUGH, Chtd., and hereby responds to the Respondents Objection to Motion for issuance of Subpoena/Motion to Quash ("Objection") as follows:

A. RESPONDENT'S OBJECTION

1. Respondent bases its Objection on the following, to wit:

a. Subpoenaing Respondent's attorney is "entirely

inappropriate;"

b. Petitioner hasn't attempted discovery by "less intrusive means;"

c. Petitioner is trying to "harass counsel;"

d. Compelling testimony "will likely invade attorney-client privilege;"

e. Petitioner "seeks to make counsel a witness...thereby depriving [Respondent] of the attorney of its choice in the matter;"

**B. RULE 7 OF THE JUDICIAL RULES OF PRACTICE AND PROCEDURE
UNDER THE IDAHO WORKER'S COMPENSATION LAW AND THE IDAHO RULES
OF CIVIL PROCEDURE**

1. Rule 7 of the J.R.P. states in pertinent part as follows:

A. Parties may obtain discovery by one or more of the following methods: depositions by oral examination...

C. Procedural matters relating to discovery...shall be controlled by the appropriate provisions of the Idaho Rules of Civil Procedure.

2. In turn, I.R.C.P. 26 provides in pertinent part as follows:

(a) Discovery Methods. Parties may obtain discovery by one or more of the following methods: depositions upon

oral examination...;

(b) (1) *Scope of Discovery in General.* Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows: (1) Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party.

3. I.R.C.P. 30 provides in pertinent part as follows:

(a) **Depositions Upon Oral Examination--When Depositions May Be Taken.** After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination.

4. And, I.R.C.P. 45 provides in pertinent part as follows:

d) **Protection against subpoena.** The court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (1) quash or modify the subpoena if it is unreasonable, oppressive, fails to allow time for compliance, requires disclosure of privileged or other protected matter and no exception or waiver applies, or subjects a person to undue burden or (2) condition

compliance with the subpoena upon the advancement of the reasonable cost of producing the books, papers, documents, electronically stored information or tangible things by the person in whose behalf the subpoena is issued.

C. PETITIONER'S REPLY

1. The aforementioned rules of J.R.P. and I.R.C.P., which is expressly incorporated by reference into the J.R.P., seem to clearly say that discovery may be done by deposition. Furthermore, any procedural matters will be controlled by looking to the I.R.C.P. for guidance and authority.

2. I.R.C.P. 26 again clearly states that depositions are one of the weapons in a litigant's discovery arsenal.

3. I.R.C.P. 26 also states that a litigant may obtain discovery on any matter, not privileged, which is relevant to the subject matter of the litigation.

4. When looking at who may be deposed, I.R.C.P. 30 provides the answer, anyone, including a party. I.R.C.P. 30 doesn't list any exclusion to who may be deposed, it doesn't exclude a party's attorney.

5. Finally, I.R.C.P. 45 provides a mechanism to protect someone from an oppressive or unreasonable or subpoena. When I.R.C.P. 45 (d) speaks of a subpoena being quashed because it "requires disclosure of privileged matters," it is speaking

about a subpoena duces tecums which requests documents to be produced. Not a subpoena solely for deposition. If during deposition a deponent is asked about privileged matters, all the deponent has to do is assert the privilege.

6. Petitioner's Motion for Issuance of Subpoena ("Motion") wasn't filed to harass counsel. Nor was it filed to deprive the Respondent of its choice of attorneys. Furthermore, there is no requirement under I.R.C.P. that discovery been done in the least intrusive means. A litigant can choose to seek discovery by any of the means prescribed by I.R.C.P.

7. The Motion was filed by the Petitioner because he seeks to find out information that is extremely relevant to his Petition for Declaratory Relief; namely, the what, when and how, of the compensation structure between Mr. Walton's firm and Respondent. Petitioner needs to know if Mr. Walton and Respondent are trying to do an end run around I.C. §§ 72-704, 72-707, and 72-803, as well as IDAPA 17.02.08.033(e)(i.) & (ii.).


CONCLUSION

Based on all of the aforementioned the Motion should be granted, and a subpoena should be issued directing Timothy C.

Walton to appear at a date and time convenient to the parties
in this matter to give his testimony by oral deposition.

DATED this 24th day of July, 2008.

ELSAESSER JARZABEK ANDERSON
MARKS ELLIOTT & McHUGH, CHTD.


James S. Macdonald,
Attorney for Petitioner

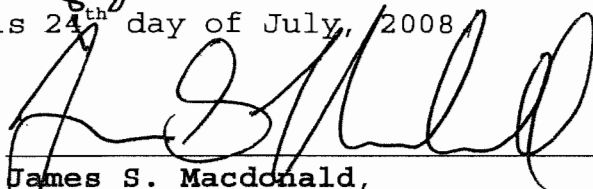
CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the
fore-going, was mailed, by regular mail, postage paid,
addressed to:

Ronald D. Coston
State Insurance Fund
P.O. Box 83720
Boise, ID 83720-0044

Timothy C. Walton
Chasan & Walton, LLC
P.O. Box 1069
Boise, Idaho 83701

on this 24th day of July, 2008


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Attorneys for Respondent

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

PATRICK W. WILLIAMS,)	I.C. No. 2006-509079
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Petitioner,)	Reply Memorandum in Support of
)	Motion to Quash Subpoena
vs.)	
)	
BLUE CROSS OF IDAHO,)	
)	
Respondent.)	

INDUSTRIAL COMMISSION

JUL 31 2008

FILED

Counsel for Petitioner Williams has taken the highly unusual step of attempting to subpoena Blue Cross' trial counsel to testify at deposition "...because (Petitioner) wanted to find out ...the what, when and how, of the compensation structure between Mr. Walton's Firm and (Blue Cross)." Williams Reply to Respondent's Objection to Motion for Issuance of Subpoena, p. 5.

How counsel is paid by Blue Cross is privileged information and thus the subpoena is improper per IRCP 45(d).

Moreover, even if such information were not privileged, it is irrelevant. If Blue Cross has a right to assert its subrogation or reimbursement claims (that is, Williams has no right of double recovery) the compensation of Blue Cross'

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INDUSTRIAL COMMISSION

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

PATRICK W. WILLIAMS,)	I.C. No. 2006-509079
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Petitioner,)	Reply Memorandum in Support of
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Counsel for Petitioner Williams has taken the highly unusual step of attempting to subpoena Blue Cross' trial counsel to testify at deposition "...because (Petitioner) wanted to find out ...the what, when and how, of the compensation structure between Mr. Walton's Firm and (Blue Cross)." Williams Reply to Respondent's Objection to Motion for Issuance of Subpoena, p. 5.

How counsel is paid by Blue Cross is privileged information and thus the subpoena is improper per IRCP 45(d).

Moreover, even if such information were not privileged, it is irrelevant. If Blue Cross has a right to assert its subrogation or reimbursement claims (that is, Williams has no right of double recovery) the compensation of Blue Cross'

counsel is irrelevant. If Blue Cross has no right of subrogation or reimbursement, the compensation agreement between Blue Cross and its counsel is likewise irrelevant.

Most significantly, however, as pointed out previously by Blue Cross, Williams has not attempted to discover the information sought by less intrusive means, such as an interrogatory or request for production.

While Williams asserts he has an unfettered right to depose opposing counsel, and that he may pursue any discovery method he chooses, the Courts have held otherwise.

For example, in Graff v. Hunt & Henriques, 2008 WL2854517 (N.D.Cal. 2008), the Court said as follows:

Rule 30(a)(1) provides that a party may depose "any person." Thus, there is no express prohibition against **deposing an attorney** of record in a case. See Shelton v. American Motors Corp., 805 F.2d 1323, 1327 (8th Cir.1986). However, **attorney** depositions are generally allowed only where the discovery sought cannot be obtained from another source. In *Shelton*, which is generally regarded as the leading case on **attorney** depositions, the Eighth Circuit explained:

"We do not hold that opposing trial counsel is absolutely immune from being deposed. We recognize that circumstances may arise in which the court should order the taking of opposing counsel's deposition. But those circumstances should be limited to where the party seeking to take the deposition has shown that (1) no other means exist to obtain the information than to depose opposing counsel; (2) the information sought is relevant and nonprivileged; and (3) the information is crucial to the preparation of the case." Shelton, 805 F.2d at 1327 (citation omitted).

The Court therefore granted Plaintiffs' motion to quash the subpoena. A copy of the Graff case is attached hereto for convenience of the Commission and counsel.

Williams has made no showing that no other means exist to obtain the information, that the information is relevant and not privileged and that the information is crucial to the preparation of his case.

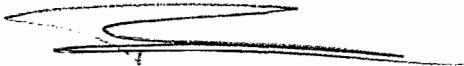
Rather, Williams seeks to make this proceeding into a circus by utilizing an offensive and burdensome means of discovery, designed to harass.

Williams' subpoena of opposing counsel sets a potentially dangerous precedent. If allowed, counsel will hereafter routinely subpoena opposing counsel for discovery depositions, causing disruption to the process of administering justice. Attorneys are ethically precluded in many instances from serving as counsel when they are also witnesses to the proceeding; privileged information will be elicited from counsel; counsel being deposed will need to retain counsel to represent the deponent at the deposition; tempers may flare when an attorney is deposing opposing counsel, and much untoward mischief can result.

Undersigned has never, in 31 years of trial work, been subpoenaed by opposing counsel to testify at deposition. Undersigned has never heard of this ever happening to any opposing counsel in Idaho. Though Mr. Jarzabek avers that the subpoena was not designed to harass, it is difficult, under these circumstances to conclude that the subpoena is sought for any legitimate purpose. In any event, Williams has clearly failed to make the required showing necessary to allow the subpoena of opposing counsel to issue.

Blue Cross requests that the Commission deny Williams' motion to issue the subpoena.

Dated this 31 day of July, 2008.



Timothy C. Walton
Attorneys for Blue Cross of Idaho

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 31 day of July, 2008, a true and correct copy of the above and foregoing document was delivered as indicated below to:

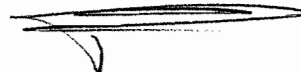
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State Insurance Fund
P. O. Box 83720
Boise, ID 83720-0044

☒ U.S. Mail
☐ Hand Delivery
☐ Overnight Courier
☐ Facsimile No.

Joseph Jarzabek
Elsaesser Harzabek Anderson
Marks Elliott & McHugh
P. O. Box 1049
Sandpoint, ID 83864

☒ U.S. Mail
☐ Hand Delivery
☐ Overnight Courier
☐ Facsimile No.: (208) 263-0759

CHASAN & WALTON, LLC



Timothy C. Walton
Attorneys for Blue Cross

Slip Copy, 2008 WL 2854517 (N.D.Cal.)

Motions, Pleadings and Filings

Only the Westlaw citation is currently available.

United States District Court, N.D. California,
San Jose Division.
Jo Anne GRAFF, Plaintiff,
v.
HUNT & HENRIQUES, et al., Defendants.
No. C 08-0908 JF (PVT).
July 23, 2008.

Fred W. Schwinn, Consumer Law Center, Inc., San Jose, CA, for Plaintiff.

Tomio Buck Narita, Robin Marie Bowen, Simmonds & Narita LLP, San Francisco, CA, for Defendants.

**ORDER RE PLAINTIFF'S MOTION TO QUASH SUBPOENA ISSUED TO PLAINTIFF'S COUNSEL
AND FOR PROTECTIVE ORDER**

PATRICIA V. TRUMBULL, United States Magistrate Judge.

*1 On June 24, 2008, Plaintiff filed a motion to quash a subpoena issued to her counsel and for a protective order.^{FN1} Defendants opposed the motion. Having reviewed the papers submitted by the parties, the court finds it appropriate to issue this order without oral argument. Based on the briefs and arguments presented,

FN1. The holding of this court is limited to the facts and the particular circumstances underlying the present motion.

IT IS HEREBY ORDERED that Plaintiff's motion is GRANTED.

Rule 30(a)(1) provides that a party may depose "any person." Thus, there is no express prohibition against deposing an attorney of record in a case. See *Shelton v. American Motors Corp.*, 805 F.2d 1323, 1327 (8th Cir.1986). However, attorney depositions are generally allowed only where the discovery sought cannot be obtained from another source. In *Shelton*, which is generally regarded as the leading case on attorney depositions, the Eighth Circuit explained:

"We do not hold that opposing trial counsel is absolutely immune from being deposed. We recognize that circumstances may arise in which the court should order the taking of opposing counsel's deposition. But those circumstances should be limited to where the party seeking to take the deposition has shown that (1) no other means exist to obtain the information than to depose opposing counsel; (2) the information sought is relevant and nonprivileged; and (3) the information is crucial to the preparation of the case." *Shelton*, 805 F.2d at 1327 (citation omitted).

Defendants have not shown that the information they seek from Plaintiff's counsel meets the *Shelton* criteria. The only relevant information arguably within Plaintiff's counsel's sole personal knowledge is whether he responded to the March 26, 2007 letter. However, in her reply brief, Plaintiff has stipulated to the facts set forth the Declaration of Michael S. Hunt in Support of Defendants' Opposition to Plaintiff's Motion to Quash Deposition Subpoena of Fred W. Schwinn. Thus, there is no need for Defendants to depose counsel in order to obtain that information. They can simply use Plaintiff's stipulation to those facts.

Defendants claim they also need the deposition to determine **why** Plaintiff's counsel failed to

respond to the March 26, 2007 letter. However, Plaintiff's counsel's reasons for not responding to the letter are irrelevant to the present action. The statutory language quoted by Defendants refers to a failure to respond "within a reasonable period of time." Here, Plaintiff has stipulated that her attorney did not respond at all. Defendants have cited no legal authority establishing that the reasonableness of counsel's *motive* for not responding is in any way relevant to this action.

Defendants also argue they need to depose Plaintiff's counsel to determine whether he intentionally failed to answer the letter in order to "fabricate" the FDCPA claim. However, the March 26, 2007 letter expressly anticipated a non-response as an appropriate option. The letter only asks for a response if counsel was authorized to accept service of process on Plaintiff's behalf. It expressly noted that if Plaintiff's counsel did not respond in 10 days, Defendants would personally serve Plaintiff directly. Thus, if Plaintiff chose not to authorize her attorney to accept service on her behalf, the letter did not call for any response at all. Absent a showing that Plaintiff *had* authorized her attorney to accept service on her behalf,^{FN2} counsel's reason for not responding to the letter is not relevant to this action.

FN2. This information is available via either an interrogatory or Plaintiffs' deposition.

*2 Because Defendants have failed to identify any relevant information which they can only obtain by deposing Plaintiff's counsel, the *Shelton* criteria are not met and requiring Plaintiff's trial counsel to submit to a deposition imposes an undue burden on Plaintiff. Thus, protection is warranted under Rule 26(c).

IT IS FURTHER ORDERED that, if Defendants learn through discovery that Plaintiff *had* authorized her attorney to accept service of process on her behalf, they may move for reconsideration of this order.

IT IS FURTHER ORDERED that, no later than July 25, 2008, Plaintiff shall file a notice of stipulation setting forth the stipulation referenced on page 1 of her reply brief in a form that Defendants can use in motion work and/or at trial.

IT IS FURTHER ORDERED that this order is without prejudice to Defendants serving either interrogatories or requests for admission on Plaintiff to seek any other relevant non-privileged information they intended to seek via the deposition of Plaintiff's counsel.

N.D.Cal., 2008.
Graff v. Hunt & Henriques
Slip Copy, 2008 WL 2854517 (N.D.Cal.)

Motions, Pleadings and Filings (Back to top)

• [5:08cv00908](#) (Docket) (Feb. 12, 2008)
END OF DOCUMENT

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BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

FILED

OCT - 7 2008

PATRICK WILLIAMS,)
)
 Claimant/Petitioner,)
)
 v.)
)
 BLUE CROSS OF IDAHO,)
)
 Respondent.)
 _____)

IC 15-000089
(2006-509079)

INDUSTRIAL COMMISSION

**ORDER REGARDING SUBPOENA
AND TELEPHONE CONFERENCE**

On September 30, 2008, the undersigned Commissioner conducted a telephone conference with legal counsel for the parties. Joseph Jarzabek represented Petitioner, and Timothy Walton represented Respondent.

On July 9, 2008, Petitioner filed a request for declaratory ruling seeking an order regarding the rights of Respondent to recover a portion of the proceeds for the medical treatment rendered to Petitioner as a result of an industrial injury. The Petitioner also submitted a memorandum of legal authority in support of his petition. Contemporaneously, Petitioner also filed a motion to subpoena Respondent's attorney, Timothy Walton, for a deposition.

Respondent answered the petition on July 10, 2008. Also on that date, Respondent filed an objection to the subpoena on grounds of relevancy and privileged/protected information. The parties argued their respective positions concerning the request for a subpoena during the telephone conference. During the telephone conference, Petitioner explained that he sought information from Walton on his attorney fee agreement with his client concerning the amount of potential compensation to be taken by Walton from the settlement proceeds. After receiving the argument of counsel, this Commissioner ruled that the requested information sought by

Petitioner is irrelevant to the issue of whether Respondent has a right to any portion of the settlement proceeds from Petitioner's work injury. Accordingly, the motion for a subpoena should be, and is hereby, DENIED.

The parties then proceeded to discuss the procedural aspects of presenting a factual background to the Commission for resolution of the issue. A stipulation of facts could not be reached by the parties. Before determining whether an evidentiary hearing is necessary, Respondent desired a period of time to explore discovery to develop the factual aspects in the case. The Commission agrees that all relevant facts should be presented to adequately frame the context of the case. Respondent believed 30-90 days would be sufficient to complete this process.

Accordingly, the parties will be granted 90 days to proceed with discovery procedures. At the conclusion of discovery, the parties may request further proceedings from the Commission to resolve the issue.


IT IS SO ORDERED.

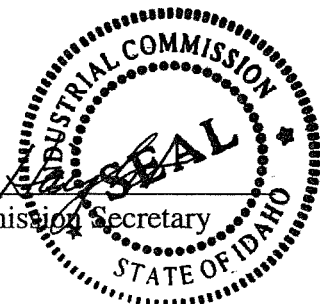
DATED this 7th day of October, 2008.

INDUSTRIAL COMMISSION


James F. Kile, Chairman

ATTEST:


Assistant Commission Secretary



ORDER REGARDING SUBPOENA AND TELEPHONE CONFERENCE - 2

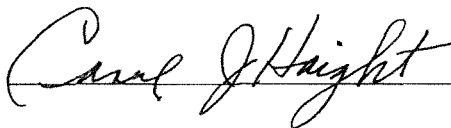
CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of October, 2008 a true and correct copy of **Order Regarding Subpoena and Telephone Conference** was served by regular United States Mail upon each of the following persons:

JOSEPH E JARZABEK
102 SO EUCLID AVENUE STE 307
SANDPOINT ID 83864-1049

TIMOTHY C WALTON
PO BOX 1069
BOISE ID 83701-1069

cjh



Timothy C. Walton
Andrew M. Chasan
CHASAN & WALTON LLC
Park Center Pointe
1459 Tyrell Lane
Post Office Box 1069
Boise, Idaho 83701-1069
Telephone: (208) 345-3760
Fax: (208) 345-0288
Idaho St. Bar #2170

Attorneys for Respondent

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

PATRICK W. WILLIAMS,	)	I.C. No. 2006-509079
)	
Petitioner,	)	RESPONDENT'S MOTION TO
	)	COMPEL
vs.)	
)	
BLUE CROSS OF IDAHO,)	
)	
Respondent.)	

2008 DEC -4 PM 1:24
INDUSTRIAL COMMISSION

COMES NOW Respondent Blue Cross of Idaho, by and through its counsel of record and hereby moves this tribunal for its Order compelling Petitioner Williams to respond to the discovery served upon Petitioner on September 26, 2008.

This motion is supported by the Affidavit of Timothy C. Walton, and the Memorandum in Support of Motion to Compel, filed contemporaneously herewith.

Dated this 3^d day of December, 2008.

CHASAN & WALTON LLC


Timothy C. Walton
Attorneys for Blue Cross of Idaho

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 3d day of December, 2008, a true and correct copy of the above and foregoing document was delivered as indicated below to:

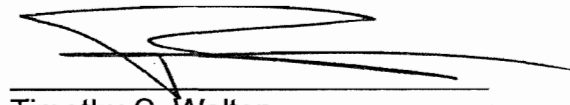
Ronald D. Coston
State Insurance Fund
P. O. Box 83720
Boise, ID 83720-0044

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CHASAN & WALTON, LLC



Timothy C. Walton
Attorneys for Blue Cross

Timothy C. Walton
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Telephone: (208) 345-3760
Fax: (208) 345-0288
Idaho St. Bar #2170

Attorneys for Respondent

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

PATRICK W. WILLIAMS,	)	I.C. No. 2006-509079
)	
Petitioner,	)	MEMORANDUM IN SUPPORT OF
	)	RESPONDENT'S MOTION TO
vs.	)	COMPEL
)	
BLUE CROSS OF IDAHO,)	
)	
Respondent.)	

INDUSTRIAL COMMISSION
2006 DEC -4 PM 1:24

In this declaratory relief action, Petitioner Williams (Williams) is asking the Commission to determine whether Respondent Blue Cross of Idaho (Blue Cross) has a right of subrogation against the lump sum settlement Williams received. Blue Cross believes (based upon information gathered to date) that the medical benefits which comprise Blue Cross' subrogation claim were for treatment of Williams' workers compensation injury.

Williams refused to stipulate that the medical benefits paid by Blue Cross were for medical expenses which Williams claimed was for treatment of the industrial injury. Therefore it is necessary for Blue Cross to establish during the discovery phase of this litigation that the medial benefits paid by Blue Cross were

for medical bills which Williams claimed were incurred in treatment of his industrial injury.

Blue Cross therefore served discovery upon Williams' attorney designed to establish that the medical expenses claimed by Blue Cross on its subrogation claim were in fact also claimed by Williams to have been incurred as a result of treatment of Williams' industrial injury. Blue Cross also seeks to establish that the health insurance policy under which Williams' medical bills were paid was an "ERISA" benefit provided by the employer to Williams. A copy of Blue Cross' discovery requests is attached to the Affidavit of Timothy C. Walton.

Under the IRCP, answers to interrogatories (including any objections thereto) are due within 30 days of service. IRCP 33(a)(2).

Similarly, responses (including objections) to requests for production are due within 30 days of service of the requests to produce. IRCP 34(b)(2).

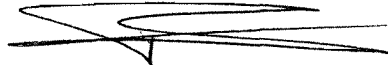
It has now been over 60 days since the discovery requests were served upon Williams' attorney. On November 14, 2008 undersigned called and wrote Williams' attorney to inquire when Williams' responses would be received, but to date Williams' attorney has not replied to said phone call or letter. Not only are Williams' responses long overdue, Williams has also waived any objection to the discovery requests by virtue of his failure to respond.

Blue Cross requests that the Industrial Commission enter an order compelling Williams to immediately provide full and complete responses to the discovery requests, including the documentation Blue Cross requested be produced, so that Blue Cross can establish that Blue Cross' subrogation claim is

for medical benefits paid under "ERISA" for treatment claimed by Williams to have been necessary by reason of his industrial injury.

Dated this 31 day of December, 2008.

CHASAN & WALTON LLC



Timothy C. Walton
Attorneys for Blue Cross of Idaho

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 31 day of December, 2008, a true and correct copy of the above and foregoing document was delivered as indicated

below to:

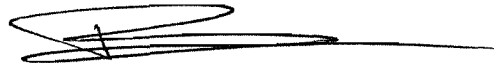
Ronald D. Coston
State Insurance Fund
P. O. Box 83720
Boise, ID 83720-0044

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CHASAN & WALTON, LLC



Timothy C. Walton
Attorneys for Blue Cross

Timothy C. Walton
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1459 Tyrell Lane
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Telephone: (208) 345-3760
Fax: (208) 345-0288
Idaho St. Bar #2170

Attorneys for Respondent

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

PATRICK W. WILLIAMS,	)	I.C. No. 2006-509079
)	
Petitioner,	)	AFFIDAVIT OF TIMOTHY C. WALTON
	)	IN SUPPORT OF RESPONDENT'S
vs.	)	MOTION TO COMPEL
)	
BLUE CROSS OF IDAHO,)	
)	
<u>Respondent.</u>)	

APR 05 2008 PM 1:25
INDUSTRIAL COMMISSION

I am the attorney for Respondent Blue Cross of Idaho (Blue Cross) and the statements contained herein are made from my own personal knowledge.

On September 26, 2008 I served Respondent's First Set of Interrogatories and Requests for Production upon counsel for Petitioner Williams (Williams). Attached hereto as Exhibit "A" is a copy of said discovery; attached hereto as Exhibit "B" is a copy of the Notice of Service of said discovery.

Williams failed to respond to said discovery within the time limits provided by the Idaho Rules of Civil Procedure.

On November 14, 2008, after said discovery was some two weeks late, I called Williams' attorney, Joe Jarzabek, to inquire when he would be responding

to my discovery requests. Mr. Jarzabek was not available to take my call, so I left a message asking that he return my call. Also, on November 14, 2008 I sent a letter to Mr. Jarzabek asking him to advise when he would be responding to my discovery requests. A copy of that letter is attached hereto as Exhibit "C". As of this date Mr. Jarzabek has failed to contact me to discuss this matter.

Dated this 30 day of December, 2008.

CHASAN & WALTON LLC



Timothy C. Walton
Attorneys for Blue Cross of Idaho

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 30 day of December, 2008, a true and correct copy of the above and foregoing document was delivered as indicated below to:

Ronald D. Coston
State Insurance Fund
P. O. Box 83720
Boise, ID 83720-0044

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CHASAN & WALTON, LLC



Timothy C. Walton
Attorneys for Blue Cross



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Timothy C. Walton
Andrew M. Chasan
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Boise, Idaho 83701-1069
Telephone: (208) 345-3760
Fax: (208) 345-0288
Idaho St. Bar #2170

Attorneys for Respondent

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

PATRICK W. WILLIAMS,	)	I.C. No. 2006-509079
)	
Petitioner,	)	RESPONDENT'S FIRST SET OF
	)	INTERROGATORIES AND
vs.	)	REQUESTS FOR PRODUCTION
	)	TO PETITIONER
BLUE CROSS OF IDAHO,)	
)	
Respondent.)	

COMES NOW, Respondent, by and through its attorneys of record, CHASAN & WALTON LLC, and pursuant to the Idaho Rules of Civil Procedure as adopted by the State of Idaho Industrial Commission and the rules and regulations of the Commission, propounds the following interrogatories and requests for production of documents to Petitioner.

1. Privilege Log.

If any document or portion thereof, which is responsive to any request herein, is or will be withheld from production, inspection or copying (whether because it is claimed to be work product, communication from attorney to client, or is entitled to be withheld for any other reason), please fully identify such

document or portion thereof in your response, and fully state in your response the reason it is or will be withheld.

2. **"Documents"** means any and all tangible things and papers, whether written, recorded, graphic, typewritten, written, printed, photographed or otherwise produced or reproduced, and whether produced manually, or by mechanical, electrical, electronic, other artificial process or a combination of these methods, and whether visible to the human eye or visible or accessible only with the aid of some device, machine or other process, (including but not limited to papers, agreements, contracts, letters, cables, wires, notes, e-mail, memoranda, correspondence, telegraphs, patents, books, reports, studies, minutes, records, accounting books, maps, plans, blueprints, sketches, charts, drawings, diagrams, photographs, movies, films, computer printouts, tape recordings, information stored on computers, assignments, notebooks, ledgers, bills, statements, invoices, checks, receipts, analyses, surveys, transcriptions and recordings), of which you have any knowledge or information, referring, relating or pertaining in any way to the subject matters in connection with which the word is used.

The term "documents" also includes, but without limitation, all originals, all identical copies, all non-identical copies of originals (whether different from the originals because of notations made on such copies or otherwise), all file copies, and all other copies, no matter how or by whom prepared, and all drafts and revisions prepared in connection with such documents, whether used or not.

3. Any reference herein to an individual, partnership, corporation or other entity shall include the agents, employees, representatives and assigns of that individual or entity.

4. Please produce the documents requested below by mailing true and correct copies of the requested documents to counsel for Respondent on or before November 1, 2008. Respondent will pay the reasonable costs of photocopying the requested documents.

5. The specificity of any request shall not be construed as reducing the scope of any more generalized request.

INTERROGATORY NO. 1: Attached hereto as Exhibit "A" is an itemization of medical bills paid by Blue Cross of Idaho, to or on behalf of Patrick W. Williams, pursuant to a Blue Cross policy of health care insurance. Was said Blue Cross of Idaho policy provided as a benefit of Patrick W. Williams' employment with Paul Crossingham dba Triple A Plumbing?

INTERROGATORY NO. 2: Did your employer, Paul Crossingham dba Triple A Plumbing, pay any portion of the premium to Blue Cross of Idaho for said Blue Cross of Idaho policy of health care insurance referred to in Interrogatory No. 1, above.

INTERROGATORY NO. 3: In pursuing your claims for workers compensation benefits against Paul Crossingham, dba Triple A Plumbing, did you claim that any of the medical bills paid by Blue Cross of Idaho as itemized on Exhibit "A" (attached), were incurred in treatment of an industrial injury or injuries you alleged you sustained while in the employ of Paul Crossingham, dba Triple A Plumbing? If so, identify which of the medical bills itemized on Exhibit "A" (attached) you claimed were incurred in treatment of an industrial injury sustained while in the employ of Paul Crossingham, dba Triple A Plumbing.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: Please produce the full and complete responses of Claimant Patrick Williams (including any documents or things produced) to any interrogatories or any requests for production served upon said claimant or his counsel in the Idaho Industrial Commission case of Patrick W. Williams, claimant vs. Paul Crossingham dba Triple A Plumbing,

employer, and State Insurance Fund, surety. For purposes of these requests for production, in the event there is more than one such case, these requests for production apply to each such case.

REQUEST FOR PRODUCTION NO. 2: Please produce copies of any depositions taken in the Idaho Industrial Commission case of Patrick W. Williams, claimant vs. Paul Crossingham dba Triple A Plumbing, employer, and State Insurance Fund, surety. For purposes of these requests for production, in the event there is more than one such case, these requests for production apply to each such case.

REQUEST FOR PRODUCTION NO. 3: Please produce copies of all correspondence between Joe Jarzabek and the State Insurance Fund related to any claim for industrial injury alleged to have been sustained by Patrick W. Williams while in the employ of Paul Crossingham, dba Triple A Plumbing. For purposes of this request, the words "State Insurance Fund" includes any and all employees and representatives of the Idaho State Insurance Fund, including but not limited to any and all claims adjusters, claims examiners or other employees of the State Insurance Fund, and any and all attorneys representing the State Insurance Fund, and/or employer, Paul Crossingham, dba Triple A Plumbing.

REQUEST FOR PRODUCTION NO. 4: Attached hereto as Exhibit "A" is an itemization of medical bills paid by Blue Cross of Idaho to, or on behalf of, Patrick W. Williams. Please produce each medical record for each such medical bill referred to in Exhibit "A".

REQUEST FOR PRODUCTION NO. 5: Please provide a copy of any Notice of Injury, Claim for Benefits pertaining to each industrial injury Patrick W. Williams claimed to have sustained while in the employ of Paul Crossingham dba Triple A Plumbing.

Dated this 25 day of September, 2008.

CHASAN & WALTON LLC



Timothy C. Walton
Attorneys for Blue Cross of Idaho

BLUE CROSS OF IDAHO
ITEMIZATION - Patrick Williams

DATE OF SVCE.	PROVIDER	AMOUNT CHARGED	AMOUNT PD.
7/7/06	KODY	166.00	128.00
7/7/06	KODY	79.00	43.00
9/5/06	M. DiBenedetto	2200.00	707.62
9/5/06	M. DiBenedetto	2100.00	409.32
9/5/06	Bonner Gen Hosp	5469.71	2439.79
9/5/06	Gene Tortorella	1116.00	688.20
11/2/06	Donna Foord	120.00	93.25
1/12/07	M. DiBenedetto	100.00	52.02
1/26/07	M. DiBenedetto	100.00	52.02
2/19/07	M. DiBenedetto	100.00	52.02
2/19/07	M. DiBenedetto	70.00	51.24
3/12/07	M. DiBenedetto	100.00	52.02
3/20/07	M. DiBenedetto	2900.00	1092.25
3/20/07	M. DiBenedetto	2300.00	481.35
3/20/07	M. DiBenedetto	25.00	20.00
3/20/07	Bonner Gen Hosp	7014.25	1888.26
3/20/07	Gene Tortorella	930.00	552.00
3/20/07	Gene Tortorella	496.00	149.04
6/28/07	Mark Hernandez	125.00	87.06
6/28/07	Mark Hernandez	150.00	56.16
7/6/07	Kathryn Robertson	125.00	87.06
7/17/07	Mark Hernandez	175.00	112.24
8/1/07	John Faggard	325.00	239.11
8/1/07	John Faggard	77.00	44.93
8/6/07	S. Benner Erickson	95.00	35.43
8/8/07	NW Specialty	1514.00	540.18
8/10/07	S. Benner Erickson	70.00	26.80
8/10/07	S. Benner Erickson	20.00	7.67
8/14/07	Mark Hernandez	175.00	112.24
8/15/07	John Faggard	75.00	55.00
8/15/07	S. Benner Erickson	70.00	26.80
8/15/07	S. Benner Erickson	20.00	7.67
8/29/07	S. Benner Erickson	70.00	26.80
8/29/07	S. Benner Erickson	20.00	7.67
9/9/07	Deaconess Medical	140.00	68.88
9/9/07	Deaconess Medical	143.00	156.98
9/12/07	Kersten Tycho	166.00	114.40
9/12/07	Kersten Tycho	79.00	36.12
10/8/07	Mark Hernandez	125.00	67.06
10/29/07	Mark Hernandez	175.00	112.24
11/12/07	Mark Hernandez	125.00	67.06
11/23/07	Kathryn Robertson	125.00	67.06
11/24/07	Mark Hernandez	125.00	67.06

TOTAL

\$11,181.08



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OCT - 2008

Timothy C. Walton ISB #2170
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Park Center Pointe
1459 Tyrell Lane
Post Office Box 1069
Boise, Idaho 83701-1069
Telephone: (208) 345-3760
Fax: (208) 345-0288
Attorneys for Respondent

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

PATRICK W. WILLIAMS,	)	I.C. No. 2006-509079
)	
Petitioner,	)	NOTICE OF SERVICE
	)	OF DISCOVERY REQUESTS
vs.)	
)	
BLUE CROSS OF IDAHO,)	
)	
Respondent.)	

FILED
SEP 29 2008
INDUSTRIAL COMMISSION

PLEASE TAKE NOTICE that on the 25th day of September, 2008, a true and correct copy of Respondent's First Set of Interrogatories and Requests for Production of Documents was served upon the State Insurance Fund and counsel for Petitioner via fax to the following: and a copy of this Notice of Service was mailed to the following on September 26th, 2008:

Ronald D. Coston
State Insurance Fund
P.O. Box 83720
Boise ID 83720-0044
Fax: 332-2225 (legal Dept.)

Joseph Jarzabek
Elsaesser Harzabek Anderson
Marks Elliott & McHugh
P.O. Box 1049
Sandpoint ID 83864
Fax: 208-263-0759

Dated this 26th day of September, 2008.

CHASAN & WALTON LLC


Timothy C. Walton
Attorneys for Blue Cross of Idaho

TW



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Sent 11/14/08

CHASAN & WALTON, L.L.C.

ATTORNEYS AT LAW

ANDREW M. CHASAN
andrew.chasan@chasanwalton.com
TIMOTHY C. WALTON
tim.walton@chasanwalton.com

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FACSIMILE
(208) 345-0288
TOLL FREE
1-800-553-3760

November 14, 2008

VIA FACSIMILE - (208) 263-0759

Joseph Jarzabek
Attorney at Law
P. O. Box 1049
Sandpoint, ID 83864

RE: Patrick Williams
Insured by: Blue Cross of Idaho
Our File No. 2007.93

Dear Mr. Jarzabek:

On September 25, 2008 I served discovery upon you (Interrogatories and Request for Production) in the *Williams v. Blue Cross of Idaho* matter pending before the Industrial Commission of the State of Idaho. Your responses to those discovery requests were due, at the latest, by November 1. I have not received your responses.

I attempted to contact you to ascertain your intentions with regard to the discovery requests on Friday, November 14, but you were unavailable.

I am writing, pursuant to Rule 37, Idaho Rules of Civil Procedure, to make a good faith effort to confer or attempt to confer with you regarding whether you will be responding to the discovery requests, since I will move to compel in the event that you fail to respond, or you fail to completely respond.

Would you please call me within seven days from the date of this letter to discuss these issues. Thank you for your attention to this matter and I look forward to hearing from you.

Most Sincerely Yours,
DICTATED AND MAILED WITHOUT
SIGNATURE TO PREVENT DELAY.

Timothy C. Walton
CHASAN & WALTON
Attorneys for Blue Cross of Idaho

TCW/kk

FILED

INDUSTRIAL COMMISSION

Respondent.


ORDER COMPELLING DISCOVERY

45


IT IS SO ORDERED.

DATED this 13th day of January, 2009.

INDUSTRIAL COMMISSION


James F. Kile, Commissioner

ATTEST:


Assistant Commission Secretary



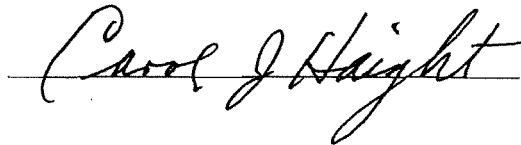
CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of January, 2009 a true and correct copy of **Order Compelling Discovery** was served by regular United States Mail upon each of the following persons:

JOSEPH E JARZABEK
102 SO EUCLID AVENUE STE 307
SANDPOINT ID 83864-1049

TIMOTHY C WALTON
PO BOX 1069
BOISE ID 83701-1069

cjh



ORDER COMPELLING DISCOVERY - 2

Timothy C. Walton
Andrew M. Chasan
CHASAN & WALTON LLC
Park Center Pointe
1459 Tyrell Lane
Post Office Box 1069
Boise, Idaho 83701-1069
Telephone: (208) 345-3760
Fax: (208) 345-0288
Idaho St. Bar #2170

Attorneys for Respondent

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

PATRICK W. WILLIAMS,	)	I.C. No. 2006-509079
)	
Petitioner,)	Respondent's Motion
vs.)	for Sanctions
)	
BLUE CROSS OF IDAHO,)	
)	
<u>Respondent.</u>)	

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INDUSTRIAL COMMISSION
FEB - 9 P 1:04

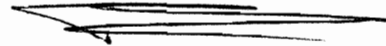
On January 13, 2009, the Industrial Commission issued an order granting Blue Cross' Motion to Compel discovery against Petitioner Williams in the above matter. Petitioner's attorney has since filed discovery responses, but those responses are incomplete and evasive. Respondent Blue Cross therefore respectfully requests that the Industrial Commission issue sanctions in this matter. Blue Cross requests that the sanctions include a finding that the Blue Cross policy was provided as a benefit of Patrick Williams' employment with Paul Crossingham dba Triple A Plumbing; that Paul Crossingham dba Triple A Plumbing paid some portion of the premium for the Blue Cross of Idaho healthcare coverage, and that in pursuing his claims for workers' compensation

benefits in the underlying case, Williams claimed that at least some of the medical bills paid by Blue Cross were incurred in treatment of an industrial injury which Williams alleged was sustained while in the employ of Paul Crossingham dba Triple A Plumbing.

This Motion is supported by the Affidavit of Timothy C. Walton and the Memorandum in Support of Motion for Sanctions (and attachments thereto), both of which are filed contemporaneously herewith.

Dated this 6th day of February, 2009.

CHASAN & WALTON LLC



Timothy C. Walton
Attorneys for Blue Cross of Idaho

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 6th day of February, 2009, a true and correct copy of the above and foregoing document was delivered as indicated below to:

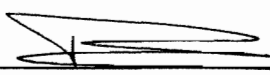
Ronald D. Coston
State Insurance Fund
P. O. Box 83720
Boise, ID 83720-0044

☒ U.S. Mail
☐ Hand Delivery
☐ Overnight Courier
☐ Facsimile No.

Joseph Jarzabek
Elsaesser Harzabek Anderson
Marks Elliott & McHugh
P. O. Box 1049
Sandpoint, ID 83864

☒ U.S. Mail
☐ Hand Delivery
☐ Overnight Courier
☐ Facsimile No.: (208) 263-0759

CHASAN & WALTON, LLC



Timothy C. Walton
Attorneys for Blue Cross of Idaho

Attorneys for Respondent

PATRICK W. WILLIAMS,
Petitioner,
vs.
BLUE CROSS OF IDAHO,
Respondent.

Affidavit of Timothy C. Walton in
Support of Motion for Sanctions

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FEDERAL COMMISSION

2009 FEB -9 P 1:04

2. On or about January 30, 2009, I received Mr. Williams' responses to Blue Cross' First Set of Interrogatories and Requests for Production. Those discovery responses included responses to Interrogatories Nos. 1, 2 and 3 and responses to Requests for Production 1, 2, 3, 4 and 5. Blue Cross' Motion for Sanctions pertains to the responses filed by Mr. Williams' attorney to

Interrogatories 1, 2 and 3. A true and correct copy of Mr. Jarzabek's responses to Interrogatories 1, 2 and 3 is attached to Blue Cross' Memorandum in support of Motion for Sanctions as Exhibit 4.

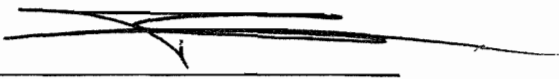
Pursuant to the Request for Production, Mr. Jarzabek also produced some documents. One of those documents produced was Mr. Jarzabek's letter of January 29, 2008, to the attorney for the State Insurance Fund in the underlying workers' compensation case. That letter contained an attachment entitled "Medical Expense Summary for Patrick W. Williams Date of Injury: April 11, 2006". A true and accurate copy of that letter (with attachment) is attached to Blue Cross' Memorandum in Support of Motion for Sanctions as Exhibit 1.

Also attached to Blue Cross' Memorandum in Support of Motion for Sanctions as Exhibit 2 is a true and accurate copy of an itemization of the benefits paid by Blue Cross for treatment of Mr. Williams' industrial injury.

Finally, attached to the Memorandum in Support of Motion for Sanctions as Exhibit 3 is a true and accurate copy of the workers' compensation complaint filed with the Industrial Commission in the underlying workers' compensation case by Mr. Williams and his attorney (Mr. Jarzabek). This workers' compensation complaint was produced by Mr. Williams' attorney pursuant to the aforementioned request for production.

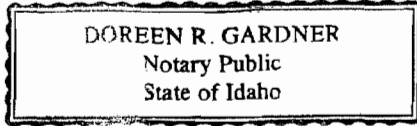
Further your Affiant saith not.

DATED this 6th day of February, 2009.



Timothy C. Walton

SUBSCRIBED AND SWORN TO before me, a Notary Public, this 6th day
of February, 2009.



A handwritten signature in cursive script, reading "Doreen R. Gardner", written over a horizontal line.

Notary Public for Idaho
Residing at Boise, Idaho
Commission Expires 2/24/2012

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 6th day of February, 2009, a true and
correct copy of the above and foregoing document was delivered as indicated
below to:

Ronald D. Coston
State Insurance Fund
P. O. Box 83720
Boise, ID 83720-0044

☒ U.S. Mail
☐ Hand Delivery
☐ Overnight Courier
☐ Facsimile No.

Joseph Jarzabek
Elsaesser Harzabek Anderson
Marks Elliott & McHugh
P. O. Box 1049
Sandpoint, ID 83864

☒ U.S. Mail
☐ Hand Delivery
☐ Overnight Courier
☐ Facsimile No.: (208) 263-0759

CHASAN & WALTON, LLC

A handwritten signature in cursive script, reading "Timothy C. Walton", written over a horizontal line.

Timothy C. Walton
Attorneys for Blue Cross of Idaho

Timothy C. Walton
Andrew M. Chasan
CHASAN & WALTON LLC
Park Center Pointe
1459 Tyrell Lane
Post Office Box 1069
Boise, Idaho 83701-1069
Telephone: (208) 345-3760
Fax: (208) 345-0288
Idaho St. Bar #2170

Attorneys for Respondent

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

PATRICK W. WILLIAMS,	)	I.C. No. 2006-509079
)	
Petitioner,)	Respondent's Memorandum in
)	Support of Motion
vs.)	for Sanctions
)	
BLUE CROSS OF IDAHO,)	
)	
Respondent.)	

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INDUSTRIAL COMMISSION
2008-9 P 1:04

On September 23, 2008, Commissioner Kile held a status conference in this case. During that status conference, undersigned asked Mr. Jarzabek (Jarzabek) to stipulate that Blue Cross paid for medical care which Mr. Williams (Williams) claimed was needed because of his industrial injury of April 11, 2006, and to further stipulate that the health care policy qualified as an ERISA plan (meaning it would be subject to the provisions of federal law). Mr. Jarzabek declined to so stipulate. Undersigned advised the Commissioner undersigned would establish those facts via discovery. Undersigned has been attempting to establish those facts ever since.

As established in Blue Cross' prior Motion to Compel, on September 25, 2008 Blue Cross served Interrogatories and Requests for Production upon Mr. Williams' attorney, Joe Jarzabek. Mr. Jarzabek failed to respond to that discovery until he was compelled to do so by pursuant to an Order to Compel entered in this case on January 13, 2009.

In that Order the Industrial Commission stated that, "Petitioner shall have fifteen days from the date of this order within which to answer all outstanding discovery requests from respondent. If petitioner fails to do so, sanctions may be imposed pursuant to Rule 16, JRP."

Petitioner finally responded to the discovery on January 30, 2009 (some 3 months late). Sadly, Petitioner's discovery responses are evasive and non-responsive with regard to responses to Interrogatories Nos. 1, 2 and 3, and with regard to the response to Interrogatory 3, inaccurate as well.

Interrogatory No. 1 asks whether the Blue Cross' health insurance policy was provided as a benefit of Patrick Williams' employment. The answer given was an evasive and non-responsive answer, stating, "Patrick W. Williams had a Blue Cross policy of health insurance while employed with Paul Crossingham, dba Triple A Plumbing."

The answer fails to state whether the Blue Cross policy was, or was not provided as a benefit of Patrick Williams' employment.

Keeping in mind that an Order to Compel has already been entered requiring Williams to properly respond to the discovery, Blue Cross requests that as a sanction for Williams' failure to fully answer the interrogatory, the Industrial

NC
Commission find that the Blue Cross policy was provided as a benefit of Patrick Williams' employment (which Blue Cross believes to be the case).

In Interrogatory No. 2 Blue Cross simply asked whether Patrick Williams' employer paid any portion of the premium to Blue Cross for that policy (Blue Cross believes that Williams employer did pay all or some portion of Williams health care coverage premium).

Petitioner responded that he did "not know what Paul Crossingham paid Blue Cross toward any premium for healthcare coverage."

This too is an evasive, non-responsive answer to the question.

Blue Cross wasn't asking how much Paul Crossingham paid for the Blue Cross coverage for Mr. Williams. Rather Blue Cross was simply asking Williams to acknowledge that the employer paid at least a portion of the Blue Cross premium for Mr. Williams. It is inconceivable that an employee would be without knowledge as to whether his employer paid **any** portion of the employee's healthcare premium.

NC
As a sanction Blue Cross requests that the Industrial Commission find that that employer paid some portion (the amount is immaterial) of Williams' premium to Blue Cross.

In Interrogatory No. 3, Blue Cross simply asked whether the medical bills paid by Blue Cross, and claimed as its subrogated interest, were incurred in treatment of an industrial injury Williams claimed to have sustained while in the employ of Crossingham, and the interrogatory asked Williams to identify which of

the medical bills paid by Blue Cross were also claimed by Williams as having been incurred in the treatment of his industrial injury.

Once again, the answer was evasive and non-responsive. It said: "See attached records. These records contain the claims made by Patrick W. Williams before the Industrial Commission of the State of Idaho. No specific claim of any specific bill was ever made by Patrick W. Williams."

Williams did not answer whether Blue Cross paid for medical care which Williams contended was related to his industrial injury; rather Williams referred the reader to a stack of records.

However, Williams' answer was not only evasive and non-responsive, it was also false. Williams **did** in fact claim in the underlying workers compensation case that specific medical bills paid for by Blue Cross were for medical care rendered for the industrial injury.

In preparation for mediation of the claim with the State Insurance Fund, Jarzabek sent a letter to the State Insurance Fund's attorney on January 29, 2008. That letter (with attachments) was produced by Williams pursuant to Blue Cross' request for production of documents.

A copy of that letter (with attachments) is attached hereto as Exhibit 1. In that letter Jarzabek claimed that Williams incurred medical expenses exceeding \$60,000.00 in treatment of the April 11, 2006 injury. (See page 4 of Jarzabek's letter).

Further, the attachment to that letter was entitled, "**Medical Expense Summary for Patrick W. Williams Date of Injury: April 11, 2006**". Every

medical expense contained in the Blue Cross itemization for dates of service July 7, 2006 through June 12, 2007 is also contained in Jarzabek's **"Medical Expense Summary for Patrick W. Williams Date of Injury: April 11, 2006"**. See Blue Cross' itemization, attached hereto as exhibit 2. For ease of reference the matching dates of service, medical providers and amount billed for each date of service are highlighted on both exhibit 1 and 2. Comparing the two documents proves beyond dispute that Blue Cross paid for the same medical bills which Williams claimed were incurred in treatment of the April 11, 2006 injury.¹

It is also worth noting that in the "Workers' Compensation Complaint" filed with the Industrial Commission in the underlying matter by Mr. Williams and his attorney (attached hereto as exhibit 3), Williams claimed that he was entitled to recover the medical expenses incurred by reason of the industrial injury.

Clearly Williams did claim he incurred specific medical bills because of the industrial injury. Just as clearly, Blue Cross paid medical bills that Williams claimed were for treatment of the industrial injury.

The system only works, and justice is only served, if the rules are enforced. Evasive, non-responsive, inaccurate answers to discovery obstruct the administration of justice.

1. There are **three other points** that should be made here. The **first** is that though the attachment to Jarzabek's January 29, 2008 letter claims that the medical bills itemized in the attachment total \$59,060.83, in fact the medical bills itemized by Mr. Jarzabek on the attachment only add up to \$31,195.14. **Secondly**, though the Blue Cross subrogation claim totaled \$11,181.08 at the start of this declaratory judgment action, because of "contractual adjustments" negotiated by Blue Cross with the medical providers totaling \$16,941.18 (see exhibit 2, attached), Blue Cross' payment of \$11,181.08 actually discharged \$28,122.26 of Williams' medical bills. **Finally**, now that Blue Cross has a list of the medical bills that Jarzabek and Williams said were incurred in treatment of the industrial injury, it is likely that Blue Cross paid, or discharged through contractual adjustments, most of Williams' industrial injury medical expenses. Undersigned is getting an updated itemization from Blue Cross. Based upon this newly discovered information it is anticipated that the Blue Cross subrogation claim is in reality \$12,000- \$14,000.

We have now wasted nearly five months trying to establish the simplest of propositions: **that Blue Cross paid for medical care that Williams claimed was in treatment of the industrial injury, pursuant to a health insurance policy that was provided to Williams as a benefit of his employment.**

Because the interrogatory answers provided are in violation of the Rules of Civil Procedure and the order compelling discovery, Blue Cross respectfully requests that the Industrial Commission issue sanctions establishing that which Williams should have admitted long ago: that the Blue Cross' policy was provided as a benefit of Patrick Williams' employment with Paul Crossingham dba Triple A Plumbing; that Paul Crossingham dba Triple A Plumbing paid some portion of the premium to Blue Cross of Idaho for that healthcare coverage; and, that in pursuing his claims for Workers' Compensation benefits in the underlying case, Williams claimed that at least some of the medical bills paid by Blue Cross were incurred in treatment of an industrial injury which Williams claimed was sustained while in the employ of Paul Crossingham, dba Triple A Plumbing (we can leave for another day the amount of medicals paid by Blue Cross in treatment of the industrial injury).

Once this factual framework has been established, this matter is ready for final disposition.

Blue Cross respectfully requests that the Industrial Commission grant the sanctions requested as soon as possible so that this matter can be resolved

without further gamesmanship.

Dated this 6th day of February, 2009.

CHASAN & WALTON LLC



Timothy C. Walton
Attorneys for Blue Cross of Idaho

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 6th day of February, 2009, a true and correct copy of the above and foregoing document was delivered as indicated below to:

Ronald D. Coston
State Insurance Fund
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CHASAN & WALTON, LLC



Timothy C. Walton
Attorneys for Blue Cross of Idaho

ELSAESSER JARZABEK ANDERSON MARKS ELLIOTT & McHUGH

**CHARTERED
ATTORNEYS - AT - LAW**

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TAEYA M. HOWELL
JAMES S. MACDONALD**

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**DONNA LaRUE, CP
PARALEGAL**

**LOIS La POINTE, RP
LEGAL ASSISTANT TO FORD ELSAESSER**

January 29, 2008

Mr. David R. Skinner
Attorney at Law
6098 Tonkin
Boise, Idaho 83704

Re: Patrick W. Williams, Claimant vs. Paul Crossingham d/b/a
Triple A Plumbing, Employer, and State Insurance Fund,
Surety I.C. No. 06-509079
DOI: April 11, 2006

Dear Mr. Skinner,

This letter will supplement previous correspondence and discussion with you regarding the above claim and our conversation following completion of the deposition of Claimant July 19, 2007. Mr. Williams sustained an injury to his left shoulder April 11, 2006 while completing assigned tasks for the defendant employer. He was evaluated at Bonner General Hospital that date by emergency room physician Tricia Dickens, M.D. She noted he had tenderness at the AC joint with a drop-off deformity and decreased sensation in his left arm. She diagnosed him with a third degree left shoulder separation and referred him to an orthopaedic physician for follow-up.

On July 7, 2006 Mr. Williams was evaluated by orthopaedic surgeon Michael H. Kody, M.D., in Spokane, Washington. Dr. Kody stated Claimant had an "obvious palpable grade 3 AC separation" which was confirmed by x-rays. He recommended examination under anesthesia, shoulder arthroscopy and ligament reconstruction July 24, 2006 following his review of Claimant's MRI. Defendants would not authorize Claimant's treatment with Dr. Kody, they suggested he seek medical care from a physician in Idaho.

Mr. David R. Skinner
Claimant: Patrick W. Williams
January 29, 2008
Page 2

On August 14, 2006, following an intervening Emergency Room visit for problems with his left upper extremity, Claimant was evaluated by orthopaedic surgeon Michael DiBenedetto, M.D., Ponderay, Idaho. Dr. DiBenedetto's impression was AC pain and possibly rotator cuff versus instability-type pain. He recommended and completed an injection of Xylocaine, Celestone and Marcaine to diagnostically isolate his AC joint pain. In follow-up August 18, 2006 Dr. DiBenedetto noted the injection did not resolve the pain deep inside Claimant's shoulder which he had experienced since his April 11, 2006 industrial injury. Dr. DiBenedetto noted on exam Claimant had excessive mobility of his clavicle which seemed to stay at a Type II slightly displaced location. With consideration for Claimant's clavicular instability and separate intra-articular problem Dr. DiBenedetto recommended arthroscopic shoulder evaluation and surgery with probable repair of SLAP lesion and subsequent Weaver-Dunn type procedure to stabilize his clavicle while doing a distal clavicle excision. Dr. DiBenedetto stated Claimant's activities would be significantly limited for six to twelve weeks post-operatively. Defendants declined to authorize surgery.

On September 5, 2006 Dr. DiBenedetto performed arthroscopic shoulder surgery and an open acromioclavicular reconstruction. In follow-up September 29, 2006 Dr. DiBenedetto noted Claimant had returned to work, stating he had been compliant with his activities and was restricting his lifting. On October 16, 2006 Dr. DiBenedetto noted Claimant had experienced a popping in his left shoulder with an immediate elevation of his clavicle and pain approximately one week ago at work. Dr. DiBenedetto recommended conservative treatment to strengthen Claimant's shoulder; he diagnosed him to have a failed Weaver-Dunn procedure post-operatively. On October 30, 2006 Dr. DiBenedetto noted Mr. Williams was developing significant dyskinesia with his shoulder and needed to get involved in an organized physical therapy program. On exam November 20, 2006 Dr. DiBenedetto stated Claimant has a very mobile distal clavicle and increasing pain in his shoulder which seemed to be from his AC joint.

On January 26, 2007 Dr. DiBenedetto noted Claimant had experienced increased pain following a significant traction phenomenon to his left arm which caused him quite a bit of pain. He recommended and completed a diagnostic injection of Xylocaine into the biceps groove of Claimant's left arm which did reduce his pain. In follow-up February 9, 2007 treatment options were reviewed, a shoulder scope with biceps tenodesis was agreed upon;

Mr. David R. Skinner
Claimant: Patrick W. Williams
January 29, 2008
Page 3

this was completed March 20, 2007. In follow-up April 27, 2007 Dr. DiBenedetto noted Claimant had been very cautious with the use of his arm at work and continued to use Tramadol and ibuprofen.

Claimant was evaluated by his general practitioner, Mark A. Hernandez, June 28, 2007 for his complaints of pain and dismobility interfering with his ADL and his vocation as a plumber. Dr. Hernandez noted Claimant was seeking an orthopaedic consult, he assessed him to have internal derangement of his left shoulder and prescribed Lortab for pain management.

Dr. Faggard, orthopaedic physician, Sandpoint, Idaho, evaluated Claimant August 1, 2007 and ordered an MRI for him. Following his review of the MRI on August 15, 2007 he recommended physical therapy, noting an EMG and nerve conduction studies might be needed if therapy did not improve his scapular winging. He indicated to Claimant that if physical therapy did not resolve his upper extremity complaints he might require surgery.

Mr. Williams was evaluated for acute left shoulder pain at the Deaconess Hospital Emergency Room while he was in Spokane, Washington September 9, 2007; he was referred to Northwest Orthopaedic Specialists in Spokane, Washington. He was subsequently evaluated by Dr. Tycho Kersten at Northwest Orthopaedic Specialists. Dr. Kersten recommended Claimant contact Dr. Frederick Matsen at the University of Washington Bone and Joint Clinic for evaluation and possible surgery. Unfortunately, Dr. Matsen declined the referral.

No orthopaedic physician who has evaluated Claimant to date has offered Claimant any treatment options; he has been unable to locate any physician who can perform the surgery recommended by Dr. Kersten.

Mr. Williams is now 28 years old; at the time of his injury in 2006 he was 26 years of age. When he commenced employment with the defendant employer May 1, 2002 he was 22 years old. Prior to his April 11, 2006 industrial injury he was able to complete all assigned job tasks. He lifted weights regularly and could bench press 275 pounds. Claimant had suffered an injury to his left upper extremity October 11, 2005. He was evaluated at the

Mr. David R. Skinner
Claimant: Patrick W. Williams
January 29, 2008
Page 4

emergency room that date and subsequently treated by Jonathan S. King, M.D., orthopaedic physician, Coeur d'Alene, Idaho. In his October 27, 2005 chart note Dr. King stated Claimant was doing much better with conservative treatment and he had explained to Mr. Williams he would likely have complete resolution of his symptoms in another month. Claimant's work history and medical records received to date, as well as his testimony at his deposition, support his contention that he achieved a full recovery following the October 11, 2005 injury.

Claimant underwent two separate surgeries as a result of his April 11, 2006 injury; his medical expense exceeds \$60,000.00. An itemization of his medical expense is attached hereto with all available billing statements. His post-surgical course was complicated by his financially required return to work. Even though he attempted to restrict himself to light-duty work and protect his shoulder, unexpected on-the-job circumstances caused exacerbation of the condition of his left upper extremity.

As you know, mediation in this matter is scheduled before the Industrial Commission February 20, 2008. Remaining disputed issues include, but are not limited to, Claimant's entitlement to TTD, determination of Claimant's impairment/ disability, non-medical factors of disability and his entitlement to attorney fees and costs in bringing this action. At this time I am authorized to advise remaining disputed issues could be compromised on a lump sum basis upon payment of \$120,000.00 for past and future disputed income benefits, permanent physical impairment and permanent partial disability.

Thank you for your cooperation and assistance working toward a disposition of this matter satisfactory to the parties.

Sincerely,

Joseph Jarzabek
JJ/ho
cc: Patrick W. Williams

MEDICAL EXPENSE SUMMARY
FOR
PATRICK W. WILLIAMS
DATE OF INJURY: APRIL 11, 2006

04/11/2006	Bonner General Hospital ER Level II 150 Pharmacy 31 E & M, Level III 151	332.00
04/12/2006	White Cross Pharmacy, Dr. Dickens Hydrocod/APAP 5 MG/500 MG 10	10.00
07/07/2006	Northwest Orthopaedic Specialists, Dr. Cody NP Detail Exam/Low Complex 166 X-Ray Shoulder Min 2 view 79	245.00
07/21/2006	Northwest Orthopaedic Specialists, Dr. Cody MRI Joint Upper Extremity W/O 1068	1,068.00
07/21/2006	Inland Imaging PS, Spokane, WA MR Imaging Upper 174	174.00
08/02/2006	Bonner General Hospital Central Supply-sling 20.5 ER Level II 150 E & M Level III 151 Pharmacy 15.5	337.00
08/03/2006	Sandpoint Super Drug, Dr. Richardson Hydrocod/APAP 7.5 MG/500 MG 10.00	10.00
08/14/2006	Michael DiBenedetto, M.D. , Initial Eval	175.00
08/17/2006	Sandpoint Super Drug, Dr. DiBenedetto Hydrocod/APAP 7.5 MG/500 MG 10.00	10.00
08/18/2006	Michael DiBenedetto, M.D., OV	100.00
08/28/2006	Sandpoint Super Drug, Dr. DiBenedetto Hydrocod/APAP 7.5 MG/500 MG 10.00	10.00
09/05/2006	Michael DiBenedetto, M.D., Surgery	5,000.00

MEDICAL EXPENSE SUMMARY
FOR PATRICK W. WILLIAMS

09/05/2006	Gene J. Tortorella, M.D., Anesthesia	1,116.00
09/05/2006	Bonner General Hospital Med/Surg Semi 630 Surgery 1385 PACU Inpatient 625 Central Supply 956.96 IV Therapy 192.25 Oxegyn 115 Pharmacy 565.50 Anesthesia 1000	5,496.71
09/06/2006	Sandpoint Super Drug, Dr. DiBenedetto Hydrocod/APAP 10 MG/500 MG 10.00	11.08
09/15/2006	Michael DiBenedetto, M.D., F/U OV, NC	-0-
09/11/2006	Sandpoint Super Drug, Dr. DiBenedetto Hydrocod/APAP 7.5 MG/500 MG 10.00	10.00
09/20/2006	Sandpoint Super Drug, Dr. DiBenedetto Hydrocod/APAP 7.5 MG/500 MG 10.00	10.00
10/16/2006	Michael DiBenedetto, M.D., F/U OV, NC	-0-
10/16/2006	Sandpoint Super Drug, Dr. DiBenedetto Hydrocod/APAP 7.5 MG/500 MG 10.00	10.00
10/30/2006	Michael DiBenedetto, M.D., F/U OV, NC	-0-
11/03/2006	Sandpoint Super Drug, Dr. DiBenedetto Hydrocod/APAP 7.5 MG/500 MG 10.00	10.00
11/06/2006	Bonner General Hospital PT PT Evaluation 101.69 Myofascial Release 35.36 E-Stim Unattended 30	167.05
11/07/2006	Bonner General Hospital PT Ther Exer Develop X 2 75.28 Myofascial Release 35.36 E-Stim Manual 35	145.54
11/13/2006	Bonner General Hospital PT Ther Exer Develop X 2 75.28	140.64

MEDICAL EXPENSE SUMMARY

FOR PATRICK W. WILLIAMS

-2-

DOI: 04/11/2006

	Joint Mobilization 35.36	
	E-Stim Unattended 30	
11/14/2006	Sandpoint Super Drug, Dr. DiBenedetto Hydrocod/APAP 5 MG/500 MG 10.00	10.00
11/20/2006	Michael DiBenedetto, M.D., F/U OV, NC	-0-
11/20/2006	Sandpoint Super Drug, Dr. DiBenedetto Tramadol 50 MG Tab 11.26	11.26
11/21/2006	Bonner General Hospital PT Ther Exer Develop 37.64 Myofascial Release x 2 70.72	140.64
11/26/2006	Sandpoint Super Drug, Dr. DiBenedetto Tramadol 50 MG Tab 11.26	11.26
12/08/2006	Michael DiBenedetto, M.D., F/U OV, NC	-0-
12/08/2006	Sandpoint Super Drug, Dr. DiBenedetto Tramadol 50 MG Tab 10 PROPO-N/APAP 100-650 Tab 10	210.00
12/15/2006	Sandpoint Super Drug, Dr. DiBenedetto Tramadol 50 MG Tab 11.26	11.26
12/22/2006	Bonner General Hospital PT Ther Exer Develop X 3 112.92 E-Stim Unattended 30	142.92
12/22/2006	Sandpoint Super Drug, Dr. DiBenedetto Tramadol 50 MG Tab 10.00	10.00
12/26/2006	Sandpoint Super Drug, Dr. DiBenedetto Tramadol 50 MG Tab 11.26	11.26
12/29/2006	Bonner General Hospital PT Ther Exer Develop X 2 75.28 Myofascial Release 35.36 E-Stim Unattended 30	140.64
01/03/2007	Sandpoint Super Drug, Dr. DiBenedetto Tramadol 50 MG Tab 11.26 Propox+NA+AP TB 100/650 10	21.26

MEDICAL EXPENSE SUMMARY
FOR PATRICK W. WILLIAMS

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DOI: 04/11/2006

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01/12/2007	Michael DiBenedetto, M.D., OV	100.00
01/12/2007	Sandpoint Super Drug, Dr. DiBenedetto Tramadol 50 MG Tab 20.51	20.51
01/22/2007	Sandpoint Super Drug, Dr. DiBenedetto Propox+NA+AP TB 100/650 10	10.00
01/26/2007	Michael DiBenedetto, M.D., OV	200.00
01/26/2007	Bonner General Hospital MRI UP EXT Joint w/o Con 1047.6 Pro Fee MRI UP EXT Joint 213.2	1,260.80
01/29/2007	Michael DiBenedetto, M.D., OV	100.00
01/03/2007	Sandpoint Super Drug, Dr. DiBenedetto Tramadol 50 MG Tab 20.51	20.51
02/05/2007	Sandpoint Super Drug, Dr. DiBenedetto Hydrocod/APAP 7.5 MG/500 MG 10.00	10.00
02/09/2007	Sandpoint Super Drug, Dr. DiBenedetto Hydrocod/APAP 10 MG/500 MG 11.08	11.08
02/13/2007	Sandpoint Super Drug, Dr. DiBenedetto Tramadol 50 MG Tab 20.51	20.51
02/19/2007	Michael DiBenedetto, M.D., OV	170.00
02/23/2007	Sandpoint Super Drug, Dr. DiBenedetto Hydrocod/APAP 10 MG/500 MG 11.08	11.08
03/01/2007	Sandpoint Super Drug, Dr. DiBenedetto Tramadol 50 MG Tab 11.08	11.08
03/12/2007	Michael DiBenedetto, M.D., OV	100.00
03/12/2007	Sandpoint Super Drug, Dr. DiBenedetto Hydrocod/APAP 10 MG/500 MG 11.08	11.08
03/19/2007	Sandpoint Super Drug, Dr. DiBenedetto Tramadol 50 MG Tab 20.51	20.51
03/20/2006	Michael DiBenedetto, M.D., OV	5,225.00

MEDICAL EXPENSE SUMMARY
FOR PATRICK W. WILLIAMS

03/20/2007	Gene J. Tortorella, M.D., Anesthesia, Nerve Block	1,426.00
03/20/2007	Bonner General Hospital	7,014.25
	Med/Surg Semi 630	
	Pharmacy 574.11	
	Drugs/IV Solutions 180.71	
	Drugs/Other 40.64	
	Med-Surg Supplies 69.77	
	Sterile Supply 1373.66	
	Supply/Implants 29.42	
	OR Services 2125	
	Anesthesia 1125	
	Drugs 215.94	
	Recovery Room 500	
	Treatment RM 150	
03/20/2007	Sandpoint Super Drug, Dr. DiBenedetto	20.00
	Oxycocone/APAP 5MG/325 MG 10.00	
	Promethegan 25MG SUPP 10.00	
03/30/2007	Sandpoint Super Drug, Dr. DiBenedetto	11.08
	Hydrocod/APAP 10 MG/500 MG 11.08	
04/09/2007	Sandpoint Super Drug, Dr. DiBenedetto	31.09
	Tramadol 50 MG Tab 20.51	
	Hydrocod/APAP 10 MG/500 MG 11.08	
04/27/2007	Michael DiBenedetto, M.D., OV	-0-
04/27/2007	Sandpoint Super Drug, Dr. DiBenedetto	20.51
	Tramadol 50 MG Tab 20.51	
05/14/2007	Sandpoint Super Drug, Dr. DiBenedetto	20.51
	Tramadol 50 MG Tab 20.51	
05/30/2007	Sandpoint Super Drug, Dr. DiBenedetto	20.51
	Tramadol 50 MG Tab 20.51	
06/12/2007	Sandpoint Super Drug, Dr. DiBenedetto	20.51
	Tramadol 50 MG Tab 20.51	

Total: \$ 59,060.83

MEDICAL EXPENSE SUMMARY
FOR PATRICK W. WILLIAMS



Medical Claim Itemization

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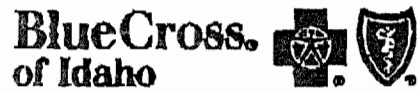
Patient		Patrick W Williams											
Enrollee ID		970110363											
Dates		Charges	Contractual Savings	Patient's Responsibility				Other Carrier Paid	Basic	Accident Supplement	Major Medical	(P)rovider (I)nsured	
				Applied to Deductible	Copayment	Coinsurance	Noncovered						
From 07/07/06	062092161800												
Thru 07/07/06	ITSPPOP KODY	166.00	38.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	128.00	P	
Revd 07/26/06													
EOB 08/07/06	DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.												
From 07/07/06	062092161800												
Thru 07/07/06	ITSPPOP KODY	79.00	36.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	43.00	P	
Revd 07/26/06													
EOB 08/07/06	DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.												
From 07/20/06	062092163200												
Thru 07/20/06	ITSPPOP KODY	1,068.00	546.45	521.55	0.00	0.00	0.00	0.00	0.00	0.00	0.00	P	
Revd 07/26/06													
EOB 08/07/06	DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.												
From 07/21/06	062122319800												
Thru 07/21/06	ITSPPOP INLAND VASCULAR	174.00	79.65	94.35	0.00	0.00	0.00	0.00	0.00	0.00	0.00	P	
Revd 07/28/06													
EOB 08/14/06	DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.												
From 09/05/06	063133608800												
Thru 09/05/06	51342 DiBenedetto, Michael R.	2,200.00	1,181.38	134.10	0.00	176.90	0.00	0.00	0.00	0.00	707.62	P	
Revd 11/08/06													
EOB 11/20/06	DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.												
From 09/05/06	063133608800												
Thru 09/05/06	51342 DiBenedetto, Michael R.	2,100.00	1,588.35	0.00	0.00	102.33	0.00	0.00	0.00	0.00	409.32	P	
Revd 11/08/06													
EOB 11/20/06	DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.												
From 09/05/06	063133608800												
Thru 09/05/06	51342 DiBenedetto, Michael R.	1,200.00	1,200.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	P	
Revd 11/08/06													
EOB 11/20/06	8A5 This service is considered part of another service. We have already considered the entire service, which included this portion.												
From 09/05/06	063550129001												
Thru 09/06/06	00067 Bonner General Hospital	5,469.71	2,419.97	0.00	0.00	609.95	0.00	0.00	0.00	0.00	2,439.79	P	
Revd 01/22/07													
EOB 02/05/07	AIQ The claim was adjusted based on information in the Accidental Injury form we received concerning this claim. Please login to bcidaho.com as a member to view additional details about your claim. DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.												



Medical Claim Itemization

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Patient		Patrick W Williams										
Enrollee ID		970110363										
Dates		Charges	Contractual Savings	Patient's Responsibility				Other Carrier Paid	Basic	Accident Supplement	Major Medical	(P)rovider (I)nsured
				Applied to Deductible	Copayment	Coinsurance	Noncovered					
From 09/05/06	071382741901											
Thru 09/05/06												
Rcvd 06/04/07	71068 Tortorella, Gene J.	1,116.00	288.00	0.00	0.00	139.80	0.00	0.00	0.00	0.00	688.20	P
EOB 06/11/07	246 This claim was reprocessed to correctly apply your benefits. Please login to bcidaho.com as a member to view additional details about your claims. DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.											
From 01/12/07	070183025900											
Thru 01/12/07												
Rcvd 01/18/07	51342 DiBenedetto, Michael R.	100.00	27.98	0.00	20.00	0.00	0.00	0.00	0.00	0.00	52.02	P
EOB 02/19/07	DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.											
From 01/26/07	070312730000											
Thru 01/26/07												
Rcvd 01/31/07	51342 DiBenedetto, Michael R.	100.00	27.98	0.00	20.00	0.00	0.00	0.00	0.00	0.00	52.02	P
EOB 02/19/07	DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.											
From 01/26/07	070312730000											
Thru 01/26/07												
Rcvd 01/31/07	51342 DiBenedetto, Michael R.	100.00	0.00	100.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	P
EOB 02/19/07												
From 01/29/07	070322850900											
Thru 01/29/07												
Rcvd 02/01/07	51342 DiBenedetto, Michael R.	100.00	0.00	100.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	P
EOB 02/19/07												
From 02/19/07	070532826600											
Thru 02/19/07												
Rcvd 02/22/07	51342 DiBenedetto, Michael R.	100.00	27.98	0.00	20.00	0.00	0.00	0.00	0.00	0.00	52.02	P
EOB 03/05/07	DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.											
From 02/19/07	070532826600											
Thru 02/19/07												
Rcvd 02/22/07	51342 DiBenedetto, Michael R.	70.00	18.76	0.00	0.00	0.00	0.00	0.00	0.00	0.00	51.24	P
EOB 03/05/07	DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.											
From 03/12/07	070752992500											
Thru 03/12/07												
Rcvd 03/16/07	51342 DiBenedetto, Michael R.	100.00	27.98	0.00	20.00	0.00	0.00	0.00	0.00	0.00	52.02	P
EOB 04/16/07	DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.											



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Medical Claim Itemization

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Patient		Patrick W Williams										
Enrollee ID		970110363										
Dates		Charges	Contractual Savings	Patient's Responsibility				Other Carrier Paid	Basic	Accident Supplement	Major Medical	(P)rovider (I)nsured
				Applied to Deductible	Copayment	Coinsurance	Noncovered					
From 03/20/07	070822707600											
Thru 03/20/07												
Rcvd 03/23/07	51342 DiBenedetto, Michael R.	2,900.00	1,534.69	0.00	0.00	273.06	0.00	0.00	0.00	0.00	1,092.25	P
EOB 04/16/07	DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.											
From 03/20/07	070822707600											
Thru 03/20/07												
Rcvd 03/23/07	51342 DiBenedetto, Michael R.	2,300.00	1,698.31	0.00	0.00	120.34	0.00	0.00	0.00	0.00	481.35	P
EOB 04/16/07	DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.											
From 03/20/07	070822707600											
Thru 03/20/07												
Rcvd 03/23/07	51342 DiBenedetto, Michael R.	25.00	0.00	0.00	0.00	5.00	0.00	0.00	0.00	0.00	20.00	P
EOB 04/16/07												
From 03/20/07	070873038200											
Thru 03/21/07												
Rcvd 03/28/07	00067 Bonner General Hospital	7,014.25	4,103.92	550.00	0.00	472.07	0.00	0.00	0.00	0.00	1,888.26	P
EOB 04/16/07	DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.											
From 03/20/07	071143397900											
Thru 03/20/07												
Rcvd 04/23/07	71068 Tortorella, Gene J.	930.00	240.00	0.00	0.00	138.00	0.00	0.00	0.00	0.00	552.00	P
EOB 04/30/07	DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.											
From 03/20/07	071143397900											
Thru 03/20/07												
Rcvd 04/23/07	71068 Tortorella, Gene J.	496.00	309.70	0.00	0.00	37.26	0.00	0.00	0.00	0.00	149.04	P
EOB 04/30/07	DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.											
From 06/28/07	071923646200											
Thru 06/28/07												
Rcvd 07/09/07	10926 Hernandez, Mark	125.00	37.94	0.00	0.00	0.00	0.00	0.00	0.00	0.00	87.06	P
EOB 07/16/07	DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.											
From 06/28/07	071923646200											
Thru 06/28/07												
Rcvd 07/09/07	10926 Hernandez, Mark	150.00	93.84	0.00	0.00	0.00	0.00	0.00	0.00	0.00	56.16	P
EOB 07/16/07	DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.											

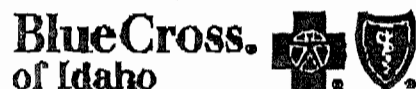


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Medical Claim Itemization

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Patient		Patrick W Williams										
Enrollee ID		970110363										
Dates		Charges	Contractual Savings	Patient's Responsibility				Other Carrier Paid	Basic	Accident Supplement	Major Medical	(P)rovider (I)nsured
				Applied to Deductible	Copayment	Coinsurance	Noncovered					
From 07/06/07	071993340000											
Thru 07/06/07												
Rcvd 07/13/07	NPMZ7 Robertson, Kathryn	125.00	37.94	0.00	0.00	0.00	0.00	0.00	0.00	0.00	87.06	P
EOB 08/06/07	DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.											
From 07/17/07	072043804000											
Thru 07/17/07												
Rcvd 07/23/07	10926 Hernandez, Mark	175.00	42.76	0.00	20.00	0.00	0.00	0.00	0.00	0.00	112.24	P
EOB 08/06/07	DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.											
From 08/01/07	072293872600											
Thru 08/01/07												
Rcvd 08/16/07	76819 Faggard, John	325.00	65.89	0.00	20.00	0.00	0.00	0.00	0.00	0.00	239.11	P
EOB 08/20/07	DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.											
From 08/01/07	072293872600											
Thru 08/01/07												
Rcvd 08/16/07	76819 Faggard, John	77.00	20.84	0.00	0.00	11.23	0.00	0.00	0.00	0.00	44.93	P
EOB 08/20/07	DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.											
From 08/06/07	072573681400											
Thru 08/06/07												
Rcvd 09/13/07	TD256 Benner Erickson, Shawna	95.00	24.14	0.00	0.00	35.43	0.00	0.00	0.00	0.00	35.43	P
EOB 09/17/07	DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.											
From 08/08/07	072322498300											
Thru 08/08/07												
Rcvd 08/20/07	00471 Northwest Specialty	1,514.00	838.78	0.00	0.00	135.04	0.00	0.00	0.00	0.00	540.18	P
EOB 08/27/07	DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.											
From 08/10/07	072573681600											
Thru 08/10/07												
Rcvd 09/13/07	TD256 Benner Erickson, Shawna	70.00	16.40	0.00	0.00	26.80	0.00	0.00	0.00	0.00	26.80	P
EOB 09/17/07	DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.											
From 08/10/07	072573681600											
Thru 08/10/07												
Rcvd 09/13/07	TD256 Benner Erickson, Shawna	20.00	4.65	0.00	0.00	7.68	0.00	0.00	0.00	0.00	7.67	P
EOB 09/17/07	DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.											



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Medical Claim Itemization

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Patient		Patrick W Williams		Patient's Responsibility				Other Carrier Paid	Basic	Accident Supplement	Major Medical	(P)rovider (I)nsured
Enrollee ID		970110363		Applied to Deductible	Copayment	Coinsurance	Noncovered					
Dates			Charges	Contractual Savings								
From 08/14/07		072353921900										
Thru 08/14/07												
Rcvd 08/22/07		10926	Hernandez, Mark	175.00	42.76	0.00	20.00	0.00	0.00	0.00	112.24	P
EOB 08/27/07		DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.										
From 08/15/07		072573544500										
Thru 08/15/07												
Rcvd 09/12/07		76819	Faggard, John	75.00	0.00	0.00	20.00	0.00	0.00	0.00	55.00	P
EOB 09/17/07												
From 08/15/07		072573681700										
Thru 08/15/07												
Rcvd 09/13/07		TD256	Benner Erickson, Shawna	70.00	16.40	0.00	0.00	26.80	0.00	0.00	26.80	P
EOB 09/17/07		DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.										
From 08/15/07		072573681700										
Thru 08/15/07												
Rcvd 09/13/07		TD256	Benner Erickson, Shawna	20.00	4.65	0.00	0.00	7.68	0.00	0.00	7.67	P
EOB 09/17/07		DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.										
From 08/29/07		072493690900										
Thru 08/29/07												
Rcvd 09/04/07		TD256	Benner Erickson, Shawna	70.00	16.40	0.00	0.00	26.80	0.00	0.00	26.80	P
EOB 09/10/07		DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.										
From 08/29/07		072493690900										
Thru 08/29/07												
Rcvd 09/04/07		TD256	Benner Erickson, Shawna	20.00	4.65	0.00	0.00	7.68	0.00	0.00	7.67	P
EOB 09/10/07		DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.										
From 08/29/07		072573682000										
Thru 08/29/07												
Rcvd 09/13/07		TD256	Benner Erickson, Shawna	70.00	0.00	0.00	0.00	0.00	70.00	0.00	0.00	P
EOB 09/17/07		8G8 This service has already been submitted for consideration. Details of the original processing are available separately.										
From 08/29/07		072573682000										
Thru 08/29/07												
Rcvd 09/13/07		TD256	Benner Erickson, Shawna	20.00	0.00	0.00	0.00	0.00	20.00	0.00	0.00	P
EOB 09/17/07		8G8 This service has already been submitted for consideration. Details of the original processing are available separately.										



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Medical Claim Itemization

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Patient		Patrick W Williams										
Enrollee ID		970110363										
Dates		Charges	Contractual Savings	Patient's Responsibility				Other Carrier Paid	Basic	Accident Supplement	Major Medical	(P)rovider (I)nsured
				Applied to Deductible	Copayment	Coinsurance	Noncovered					
From 09/06/07	080704186800											
Thru 09/06/07												
Rcvd 03/10/08	00067 Bonner General Hospital	3.79	0.00	0.00	0.00	0.00	3.79	0.00	0.00	0.00	0.00	P
EOB 03/17/08	231 Worker's Compensation is responsible for these charges. Please ask your provider to submit a claim for these services to your worker's compensation carrier.											
From 09/06/07	080704186800											
Thru 09/06/07												
Rcvd 03/10/08	00067 Bonner General Hospital	130.26	0.00	0.00	0.00	0.00	130.26	0.00	0.00	0.00	0.00	P
EOB 03/17/08	231 Worker's Compensation is responsible for these charges. Please ask your provider to submit a claim for these services to your worker's compensation carrier.											
From 09/06/07	080704186800											
Thru 09/06/07												
Rcvd 03/10/08	00067 Bonner General Hospital	310.00	0.00	0.00	0.00	0.00	310.00	0.00	0.00	0.00	0.00	P
EOB 03/17/08	231 Worker's Compensation is responsible for these charges. Please ask your provider to submit a claim for these services to your worker's compensation carrier.											
From 09/06/07	080704308200											
Thru 09/06/07												
Rcvd 03/10/08	77059 Hitchcock, Robyn A.	146.90	0.00	0.00	0.00	0.00	146.90	0.00	0.00	0.00	0.00	P
EOB 03/17/08	231 Worker's Compensation is responsible for these charges. Please ask your provider to submit a claim for these services to your worker's compensation carrier. DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.											
From 09/06/07	082182669700											
Thru 09/06/07												
Rcvd 08/05/08	77059 Hitchcock, Robyn A.	146.90	0.00	0.00	0.00	0.00	146.90	0.00	0.00	0.00	0.00	P
EOB 08/11/08	8GB This service has already been submitted for consideration. Details of the original processing are available separately.											
From 09/06/07	082192899400											
Thru 09/06/07												
Rcvd 08/06/08	HBFM4 Van Vooren, Edward C.	27.10	0.00	0.00	0.00	0.00	27.10	0.00	0.00	0.00	0.00	P
EOB 08/11/08	231 Worker's Compensation is responsible for these charges. Please ask your provider to submit a claim for these services to your worker's compensation carrier. DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.											
From 09/09/07	072642248700											
Thru 09/09/07												
Rcvd 09/19/07	ITSPPO DEACONESS MEDICAL	140.00	53.90	0.00	0.00	17.22	0.00	0.00	0.00	0.00	68.88	P
EOB 10/01/07	DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.											
From 09/09/07	072742387300											
Thru 09/09/07												
Rcvd 09/19/07	ITSPPO DEACONESS MEDICAL	143.00	-42.58	0.00	0.00	28.60	0.00	0.00	0.00	0.00	156.98	P
EOB 10/08/07	DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.											



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Medical Claim Itemization

Printed 9/24/2008

Patient		Patrick W Williams										
Enrollee ID		970110363										
Dates		Charges	Contractual Savings	Patient's Responsibility				Other Carrier Paid	Basic	Accident Supplement	Major Medical	(P)rovider (I)nsured
				Applied to Deductible	Copayment	Coinsurance	Noncovered					
From 09/12/07	072672411500											
Thru 09/12/07												
Rcvd 09/21/07	ITSPPOP KERSTEN TYCHO	166.00	31.60	0.00	20.00	0.00	0.00	0.00	0.00	0.00	114.40	P
EOB 10/01/07	DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.											
From 09/12/07	072672411500											
Thru 09/12/07												
Rcvd 09/21/07	ITSPPOP KERSTEN TYCHO	79.00	33.85	0.00	0.00	9.03	0.00	0.00	0.00	0.00	36.12	P
EOB 10/01/07	DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.											
From 10/08/07	072883440200											
Thru 10/08/07												
Rcvd 10/12/07	10926 Hernandez, Mark	125.00	37.94	0.00	20.00	0.00	0.00	0.00	0.00	0.00	67.06	P
EOB 11/12/07	DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.											
From 10/29/07	073173262800											
Thru 10/29/07												
Rcvd 11/09/07	10926 Hernandez, Mark	175.00	42.76	0.00	20.00	0.00	0.00	0.00	0.00	0.00	112.24	P
EOB 11/19/07	DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.											
From 11/12/07	073243592800											
Thru 11/12/07												
Rcvd 11/19/07	10926 Hernandez, Mark	125.00	37.94	0.00	20.00	0.00	0.00	0.00	0.00	0.00	67.06	P
EOB 11/26/07	DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.											
From 11/23/07	073343516900											
Thru 11/23/07												
Rcvd 11/29/07	NPMZ7 Robertson, Kathryn	125.00	37.94	0.00	20.00	0.00	0.00	0.00	0.00	0.00	67.06	P
EOB 12/03/07	DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.											
From 11/24/07	073343517400											
Thru 11/24/07												
Rcvd 11/29/07	10926 Hernandez, Mark	125.00	37.94	0.00	20.00	0.00	0.00	0.00	0.00	0.00	67.06	P
EOB 12/03/07	DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.											
From 01/03/08	080093631400											
Thru 01/03/08												
Rcvd 01/09/08	10926 Hernandez, Mark	175.00	0.00	0.00	0.00	0.00	175.00	0.00	0.00	0.00	0.00	P
EOB 01/21/08	240 This member's coverage has ended. Services provided after the last day of coverage are not eligible for coverage.											



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Medical Claim Itemization

Printed 9/24/2008

Patient		Patrick W Williams										
Enrollee ID		970110363										
Dates		Charges	Contractual Savings	Patient's Responsibility				Other Carrier Paid	Basic	Accident Supplement	Major Medical	(P)rovider (I)nsured
				Applied to Deductible	Copayment	Coinsurance	Noncovered					
From 01/03/08	081080005400											
Thru 01/03/08												
Rcvd 04/11/08	10926 Hernandez, Mark	175.00	42.76	0.00	20.00	0.00	0.00	0.00	0.00	0.00	112.24	P
EOB 04/21/08	551 This adjustment is the result of a corrected claim received from the provider of service. Please login to bcidaho.com as a member to view additional details about your claims. DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.											
From 02/01/08	080504405001											
Thru 02/01/08												
Rcvd 05/08/08	00067 Bonner General Hospital	1,194.26	0.00	14.79	0.00	235.89	0.00	0.00	0.00	0.00	943.58	P
EOB 07/14/08	AIQ The claim was adjusted based on information in the Accidental Injury form we received concerning this claim. Please login to bcidaho.com as a member to view additional details about your											
From 02/01/08	080504507501											
Thru 02/01/08												
Rcvd 05/08/08	HPADI Maile, Charles W.	267.80	133.60	134.20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	P
EOB 05/12/08	AIQ The claim was adjusted based on information in the Accidental Injury form we received concerning this claim. Please login to bcidaho.com as a member to view additional details about your DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.											
From 02/01/08	081080005900											
Thru 02/01/08												
Rcvd 04/11/08	00067 Bonner General Hospital	1,194.26	0.00	0.00	0.00	0.00	1,194.26	0.00	0.00	0.00	0.00	P
EOB 04/21/08	231 Worker's Compensation is responsible for these charges. Please ask your provider to submit a claim for these services to your worker's compensation carrier.											
From 04/14/08	081122775300											
Thru 04/14/08												
Rcvd 04/21/08	77010 DiBenedetto, Michael R.	100.00	8.92	0.00	20.00	0.00	0.00	0.00	0.00	0.00	71.08	P
EOB 04/28/08	DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.											
From 04/14/08	081122775300											
Thru 04/14/08												
Rcvd 04/21/08	77010 DiBenedetto, Michael R.	100.00	0.00	100.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	P
EOB 04/28/08												
From 04/24/08	081213101300											
Thru 04/24/08												
Rcvd 04/30/08	00067 Bonner General Hospital	15.00	0.00	15.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	P
EOB 05/12/08												
From 04/24/08	081213101300											
Thru 04/24/08												
Rcvd 04/30/08	00067 Bonner General Hospital	38.01	0.00	38.01	0.00	0.00	0.00	0.00	0.00	0.00	0.00	P
EOB 05/12/08												



Medical Claim Itemization

Printed 9/24/2008

Patient		Patrick W Williams										
Enrollee ID		970110363										
Dates		Charges	Contractual Savings	Patient's Responsibility				Other Carrier Paid	Basic	Accident Supplement	Major Medical	(P)rovider (I)nsured
				Applied to Deductible	Copayment	Coinsurance	Noncovered					
From 04/24/08	081213101300											
Thru 04/24/08												
Rcvd 04/30/08	00067 Bonner General Hospital	17.36	0.00	17.36	0.00	0.00	0.00	0.00	0.00	0.00	0.00	P
EOB 05/12/08												
From 04/24/08	081213101300											
Thru 04/24/08												
Rcvd 04/30/08	00067 Bonner General Hospital	310.00	0.00	310.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	P
EOB 05/12/08												
From 04/24/08	081213249300											
Thru 04/24/08												
Rcvd 04/30/08	HBFO9 Gramyk, Kenneth J.	167.47	73.16	94.31	0.00	0.00	0.00	0.00	0.00	0.00	0.00	P
EOB 05/12/08	DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.											
From 05/09/08	081352922700											
Thru 05/09/08												
Rcvd 05/14/08	77010 DiBenedetto, Michael R.	100.00	8.92	0.00	20.00	0.00	0.00	0.00	0.00	0.00	71.08	P
EOB 05/19/08	DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.											
From 05/31/08	081563508300											
Thru 05/31/08												
Rcvd 06/04/08	10926 Hernandez, Mark	175.00	37.69	0.00	20.00	0.00	0.00	0.00	0.00	0.00	117.31	P
EOB 06/09/08	DIS The charge exceeds the allowable amount for this service. You are responsible for any amounts listed in the noncovered column.											
From 06/16/08	081822848500											
Thru 06/16/08												
Rcvd 06/30/08	TD629 Boyd, Mary A.	77.94	0.00	0.00	0.00	0.00	77.94	0.00	0.00	0.00	0.00	P
EOB 07/07/08	240 This member's coverage has ended. Services provided after the last day of coverage are not eligible for coverage.											
From 06/16/08	081822848500											
Thru 06/16/08												
Rcvd 06/30/08	TD629 Boyd, Mary A.	56.94	0.00	0.00	0.00	0.00	56.94	0.00	0.00	0.00	0.00	P
EOB 07/07/08	240 This member's coverage has ended. Services provided after the last day of coverage are not eligible for coverage.											
From 06/18/08	081822848500											
Thru 06/18/08												
Rcvd 06/30/08	TD629 Boyd, Mary A.	113.88	0.00	0.00	0.00	0.00	113.88	0.00	0.00	0.00	0.00	P
EOB 07/07/08	240 This member's coverage has ended. Services provided after the last day of coverage are not eligible for coverage.											

011/011



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Medical Claim Itemization

Printed 9/24/2008

Patient		Patrick W Williams													
Enrollee ID		970110363													
Dates			Charges	Contractual Savings	Patient's Responsibility				Other Carrier Paid	Basic	Accident Supplement	Major Medical	(P)rovider (I)nsured		
					Applied to Deductible	Copayment	Coinsurance	Noncovered							
From 06/25/08		081842752000													
Thru 06/25/08															
Rcvd 07/02/08		TD629	Boyd, Mary A.	113.88	0.00	0.00	0.00	0.00	113.88	0.00	0.00	0.00	0.00	P	
EOB 07/07/08		240 This member's coverage has ended. Services provided after the last day of coverage are not eligible for coverage.													
From 07/01/08		082353394700													
Thru 07/01/08															
Rcvd 08/21/08		10926	Hernandez, Mark	125.00	0.00	0.00	0.00	0.00	125.00	0.00	0.00	0.00	0.00	P	
EOB 08/25/08		240 This member's coverage has ended. Services provided after the last day of coverage are not eligible for coverage.													
Patient Totals:				37,588.71	17,239.48	2,223.67	360.00	2,650.59	2,711.85	0.00	0.00	0.00	12,403.12		
Report Totals:				37,588.71	17,239.48	2,223.67	360.00	2,650.59	2,711.85	0.00	0.00	0.00	12,403.12		

WESTVET

09/24/2008 15:00 FAX 208 375 1808

I. C. No: 06-509079

WORKERS' COMPENSATION COMPLAINT

CLAIMANT'S NAME AND ADDRESS Patrick W. Williams c/o Elsaesser Jarzabek Anderson Marks Elliott & & McHugh P.O. Box 1049 Sandpoint, Idaho 83864 TELEPHONE NUMBER: 208-263-8517		CLAIMANT'S ATTORNEY'S NAME, ADDRESS, AND TELEPHONE NUMBER Joseph Jarzabek Elsaesser Jarzabek Anderson Marks Elliott & McHugh P.O. Box 1049 Sandpoint, Idaho 83864 208-263-8517
EMPLOYER'S NAME AND ADDRESS Paul Crossingham d/b/a Triple A Plumbing 127 The Cross Road Sandpoint, Idaho 83864		WORKERS' COMPENSATION INSURANCE CARRIER'S (NOT ADJUSTOR'S) NAME AND ADDRESS State Insurance Fund P.O. Box 83720 Boise, Idaho 83720-0044
CLAIMANT'S SOCIAL SECURITY NO. <div style="background-color: black; width: 100px; height: 1.2em;"></div>	CLAIMANT'S BIRTHDATE <div style="background-color: black; width: 100px; height: 1.2em;"></div>	DATE OF INJURY OR MANIFESTATION OF OCCUPATIONAL DISEASE April 11, 2006
STATE AND COUNTY IN WHICH INJURY OCCURRED Bonner County, Idaho		WHEN INJURED, CLAIMANT WAS EARNING AN AVERAGE WEEKLY WAGE OF: \$760 <small>PURSUANT TO IDAHO CODE § 72-419</small>

DESCRIBE HOW INJURY OR OCCUPATIONAL DISEASE OCCURRED (WHAT HAPPENED)

Claimant was completing assigned job tasks.

NATURE OF MEDICAL PROBLEMS ALLEGED AS A RESULT OF ACCIDENT OR OCCUPATIONAL DISEASE

Claimant sustained an injury to his upper extremity.

WHAT WORKERS' COMPENSATION BENEFITS ARE YOU CLAIMING AT THIS TIME?

Medical expense, TTD benefits, permanent partial disability to be determined at hearing or through mediation.

DATE ON WHICH NOTICE OF INJURY WAS GIVEN TO EMPLOYER
April 11, 2006

TO WHOM YOU GAVE NOTICE
Paul Crossingham

HOW NOTICE WAS GIVEN: ORAL ☒ ☐

WRITTEN ☐ ☒

OTHER, PLEASE SPECIFY _____

ISSUE OR ISSUES INVOLVED

- 1) Compensation as defined by Idaho Code §72-102(6) to which Claimant is entitled;
- 2) TTD and TPD benefits to which Claimant is entitled;
- 3) Determination of Claimant's permanent physical impairment/permanent disability;
- 4) Determination of Claimant's entitlement to retraining benefits, if applicable;
- 5) Determination of payment of medical expenses, mileage reimbursement, etc. to which Claimant is entitled;
- 6) Determination of Claimant's entitlement to an award of attorney's fees and costs incurred in prosecution of this matter;
- 7) Such other and further issues as may arise prior to, at or following hearing.

DO YOU BELIEVE THIS CLAIM PRESENTS A NEW QUESTION OF LAW OR A COMPLICATED SET OF FACTS? YES _____ NO XX IF SO, PLEASE STATE WHY.

NOTICE: COMPLAINTS AGAINST THE INDUSTRIAL SPECIAL INDEMNITY FUND MUST BE IN ACCORDANCE WITH IDAHO CODE § 72-334 AND FILED ON FORM I.C. 1002

WHAT MEDICAL COSTS HAVE YOU INCURRED TO DATE? **Unknown**

WHAT MEDICAL COSTS HAS YOUR EMPLOYER PAID, IF ANY? **Unknown**

WHAT MEDICAL COSTS HAVE YOU PAID, IF ANY? **Unknown**

I AM INTERESTED IN MEDIATING THIS CLAIM, IF THE OTHER PARTIES AGREE.

YES ☒ NO ☐

DATE

12-13-06

SIGNATURE OF CLAIMANT OR ATTORNEY

Joe J. J. J.

PLEASE ANSWER THE SET OF QUESTIONS IMMEDIATELY BELOW ONLY IF CLAIM IS MADE FOR DEATH BENEFIT

NAME AND SOCIAL SECURITY NUMBER OF PARTY
FILING COMPLAINT

DATE OF DEATH

RELATION OF DECEASED TO CLAIMANT

WAS THE FILING PARTY DEPENDENT ON DECEASED?

YES ☐ NO ☐

DID FILING PARTY LIVE WITH DECEASED AT TIME OF ACCIDENT?

YES ☐ NO ☐

CLAIMANT MUST COMPLETE, SIGN AND DATE THE ATTACHED MEDICAL RELEASE FORM:

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of December, 2006 I caused to be served a true and correct copy of the foregoing Complaint upon:

EMPLOYER'S NAME AND ADDRESS

Paul Crossingham d/b/a
Triple A Plumbing
C/O State Insurance Fund
P.O. Box 83720
Boise, Idaho 83720-0044

SURETY'S NAME AND ADDRESS

State Insurance Fund
P.O. Box 83720
Boise, Idaho 83720-0044

via: ☐ personal service of process

☒ regular U.S. Mail

via: ☐ personal service of process

☒ regular U.S. Mail

Signature

Joe J. J. J.

NOTICE! An Employer or Insurance Company served with a Complaint must file an Answer on Form I.C. 1003 with the Industrial Commission within 21 days of the date of service as specified on the certificate of mailing to avoid default. If no answer is filed, a Default Award may be entered!

Further information may be obtained from: Industrial Commission, Judicial Division, P.O. Box 83720, Boise, Idaho 83720-0041 (208) 334-6000

(COMPLETE MEDICAL RELEASE FORM ON PAGE 3)

Complaint—Page 2 of 3

INDUSTRIAL COMMISSION
PO BOX 83720
BOISE ID 83720-0041

Patient Name: WILLIAMS
Birth Date: [REDACTED]
Address: c/o Joseph Jarzabek, Attorney at Law
P.O. Box 1049, Sandpoint, Idaho 83864
Phone Number: 208-263 8517
SSN or Case Number: [REDACTED]

(Provider Use Only)
Medical Record
Number: _____
El: Pick up Copies El: Fax Copies

AUTHORIZATION FOR DISCLOSURE OF HEALTH INFORMATION

I hereby authorize _____ to disclose health information as specified:
Provider Name - must be specific for each provider

To: _____
Insurance Company/Third Party Administrator/Self Insured Employer/ISIF, their attorneys or patient's attorney

Street Address

City

State

Zip Code

Purpose or need for data: _____

(e.g. Worker's Compensation Claim)

Information to be disclosed: _____ Date(s) of Hospitalization/Care: _____

- ☐ Discharge Summary
- ☐ History & Physical Exam
- ☐ Consultation Reports
- ☐ Operative Reports
- ☐ Lab
- ☐ Pathology
- ☐ Radiology Reports
- ☐ Entire Record
- ☐ Other: Specify _____

I understand that the disclosure may include information relating to (check if applicable):

- ☐ AIDS or HIV
- ☐ Psychiatric or Mental Health Information
- ☐ Drug/Alcohol Abuse Information

I understand that the information to be released may include material that is protected by Federal Law (45 CFR Part 164) and that the information may be subject to redisclosure by the recipient and no longer be protected by the federal regulations. I understand that this authorization may be revoked in writing at any time by notifying the privacy officer, except that revoking the authorization won't apply to information already released in response to this authorization. I understand that the provider will not condition treatment, payment, enrollment, or eligibility for benefits on my signing this authorization. Unless otherwise revoked, this authorization will expire upon resolution of worker's compensation claim. Provider, its employees, officers, copy service contractor, and physicians are hereby released from any legal responsibility or liability for disclosure of the above information to the extent indicated and authorized by me on this form and as outlined in the Notice of Privacy. My signature below authorizes release of all information specified in this authorization. Any questions that I have regarding disclosure may be directed to the privacy officer of the Provider specified above.

Pat Williams
Signature of Patient

9-18-06
Date

Signature of Legal Representative & Relationship to Patient/Authority to Act

Date

Signature of Witness

Title

Date

JAN 30 2009

Joseph Jarzabek
ELSAESSER JARZABEK ANDERSON
MARKS ELLIOTT & McHUGH, Chtd.
Attorneys at Law
102 S. Euclid Avenue, Suite 307
P.O. Box 1049
Sandpoint, ID 83864
(208) 263-8517; Telephone
(208) 263-0759; Facsimile
Idaho State Bar No. 2678

BEFORE THE INDUSTRIAL COMMISSION, STATE OF IDAHO

PATRICK W. WILLIAMS,)	
	)	I.C. No. 2006-509079
Petitioner,)	
	)	PETITIONER'S RESPONSES TO
-vs-	)	RESPONDENT'S FIRST SET OF
	)	INTERROGATORIES AND REQUESTS
BLUE CROSS OF IDAHO,	)	FOR PRODUCTION
)	
<u>Respondent.</u>)	

INTERROGATORY NO. 1: Attached hereto as Exhibit "A" is an itemization of medical bills paid by Blue Cross of Idaho, to or on behalf of Patrick W. Williams, pursuant to a Blue Cross policy of health care insurance. Was said Blue Cross of Idaho policy provided as a benefit of Patrick W. Williams' employment with Paul Crossingham dba Triple A Plumbing?

RESPONSE TO INTERROGATORY NO. 1: Patrick W. Williams had a Blue Cross policy of health insurance while employed with Paul Crossingham, dba Triple A Plumbing.

INTERROGATORY NO. 2: Did your employer, Paul Crossingham dba Triple A Plumbing, pay any portion of the premium to Blue Cross

PETITIONER'S RESPONSES TO RESPONDENT'S
FIRST SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION

-1-

I.C. No. 2006-509079

of Idaho for said Blue Cross of Idaho policy of health care insurance referred to in Interrogatory No. 1, above.

RESPONSE TO INTERROGATORY NO. 2: Patrick W. Williams does not know what Paul Crossingham paid Blue Cross toward any premium for health care coverage.

INTERROGATORY NO. 3: In pursuing your claims for workers compensation benefits against Paul Crossingham, dba Triple A Plumbing, did you claim that any of the medical bills paid by Blue Cross of Idaho as itemized on Exhibit "A" (attached), were incurred in treatment of an industrial injury or injuries you alleged you sustained while in the employ of Paul Crossingham, dba Triple A Plumbing? If so, identify which of the medical bills itemized on Exhibit "A" (attached) you claimed were incurred in treatment of an industrial injury sustained while in the employ of Paul Crossingham, dba Triple A Plumbing.

RESPONSE TO INTERROGATORY NO. 3: See attached records. These records contain the claims made by Patrick W. Williams before the Industrial Commission of the state of Idaho. No specific claim of any specific bill was ever made by Patrick W. Williams.

REQUEST FOR PRODUCTION NO. 1: Please produce the full and complete responses of Claimant Patrick Williams (including any documents or things produced) to any interrogatories or any

requests for production served upon said claimant or his counsel in the Idaho Industrial Commission case of Patrick W. Williams, claimant vs. Paul Crossingham dba Triple A Plumbing, employer, and State Insurance Fund, surety. For purposes of these requests for production, in the event there is more than one such case, these requests for production apply to each such case.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1: Patrick W. Williams never answered any interrogatories or requests for production.

REQUEST FOR PRODUCTION NO. 2: Please produce copies of any depositions taken in the Idaho Industrial Commission case of Patrick W. Williams, claimant vs. Paul Crossingham dba Triple A Plumbing, employer, and State Insurance Fund, surety. For purposes of these requests for production, in the event there is more than one such case, these requests for production apply to each such case.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2: Petitioner has no copies of any deposition taken in the Industrial Commission case. To the best of Claimant's knowledge, the attorney for State Insurance Fund, David R. Skinner, may have taken Claimant's deposition. Claimant's counsel never ordered a copy of the transcript of the deposition and there is no deposition transcript in Claimant's file.

REQUEST FOR PRODUCTION NO. 3: Please produce copies of all correspondence between Joe Jarzabek and the State Insurance Fund related to any claim for industrial injury alleged to have been sustained by Patrick W. Williams while in the employ of Paul Crossingham, dba Triple A Plumbing. For purposes of this request, the words "State Insurance Fund" includes any and all employees and representatives of the Idaho State Insurance Fund, including but not limited to any and all claims adjusters, claims examiners or other employees of the State Insurance Fund, and any and all attorneys representing the State Insurance Fund, and/or employer, Paul Crossingham, dba Triple A Plumbing.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3: See attached records.

REQUEST FOR PRODUCTION NO. 4: Attached hereto as Exhibit "A" is an itemization of medical bills paid by Blue Cross of Idaho to, or on behalf of, Patrick W. Williams. Please produce each medical record for each such medical bill referred to in Exhibit "A".

RESPONSE TO REQUEST FOR PRODUCTION NO. 4: See attached records. Blue Cross assumes Patrick W. Williams has medical records for each medical bill. This is incorrect. Attached are copies of what Petitioner's file contains.

REQUEST FOR PRODUCTION NO. 5: Please provide a copy of any Notice of Injury, Claim for Benefits pertaining to each industrial

injury Patrick W. Williams claimed to have sustained while in the employ of Paul Crossingham dba Triple A Plumbing.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5: See attached records.

DATED this 29th day of January, 2009.



JOSEPH JARZABEK

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing, was mailed, by regular mail, postage paid, addressed to:

Timothy C. Walton
Chasan & Walton, LLC
P.O. Box 1069
Boise, Idaho 83701

Ronald D. Coston
State Insurance Fund
P.O. Box 83720
Boise, ID 83720-0044

on this 29th day of January, 2009.

Joseph Jarzabek
ELSAESSER JARZABEK ANDERSON
MARKS ELLIOTT & McHUGH, Chtd.
 Attorneys at Law
 102 S. Euclid Avenue, Suite 307
 P.O. Box 1049
 Sandpoint, ID 83864
 (208) 263-8517; Telephone
 (208) 263-0759; Facsimile
 Idaho State Bar No. 2678

FILED

MAR - 9 2009

INDUSTRIAL COMMISSION

BEFORE THE INDUSTRIAL COMMISSION, STATE OF IDAHO

PATRICK W. WILLIAMS,)	
	)	I.C. No. 2006-509079
Petitioner,)	
	)	PETITIONER'S RESPONSE TO
-vs-	)	RESPONDENT'S MOTION FOR
	)	SANCTIONS
BLUE CROSS OF IDAHO,)	
)	
<u>Respondent.</u>)	

COMES NOW the Petitioner, Patrick Williams, by and through his attorney, Joseph Jarzabek, and in response to the Motion for Sanctions filed by Respondent February 9, 2009 addressed in Respondent's correspondence to this Commission February 25, 2009, states as follows:

1) With respect to Respondent's Interrogatory No. 1
 Petitioner Williams truthfully stated that while employed with Triple A Plumbing he had a Blue Cross policy of health insurance. Blue Cross had a contract of insurance with his employer; Respondents can ask the employer whether or not the policy of

PETITIONER'S RESPONSES TO RESPONDENT'S
 MOTION FOR SANCTIONS

-1-

I.C. No. 2006-509079

Joseph Jarzabek
ELSAESSER JARZABEK ANDERSON
MARKS ELLIOTT & McHUGH, Chtd.
Attorneys at Law
102 S. Euclid Avenue, Suite 307
P.O. Box 1049
Sandpoint, ID 83864
(208) 263-8517; Telephone
(208) 263-0759; Facsimile
Idaho State Bar No. 2678

BEFORE THE INDUSTRIAL COMMISSION, STATE OF IDAHO

PATRICK W. WILLIAMS,)	
	)	I.C. No. 2006-509079
Petitioner,)	
	)	PETITIONER'S RESPONSE TO
-vs-	)	RESPONDENT'S MOTION FOR
	)	SANCTIONS
BLUE CROSS OF IDAHO,)	
)	
<u>Respondent.</u>)	

COMES NOW the Petitioner, Patrick Williams, by and through his attorney, Joseph Jarzabek, and in response to the Motion for Sanctions filed by Respondent February 9, 2009 addressed in Respondent's correspondence to this Commission February 25, 2009, states as follows:

1) With respect to Respondent's Interrogatory No. 1
Petitioner Williams truthfully stated that while employed with Triple A Plumbing he had a Blue Cross policy of health insurance. Blue Cross had a contract of insurance with his employer; Respondents can ask the employer whether or not the policy of

PETITIONER'S RESPONSES TO RESPONDENT'S
MOTION FOR SANCTIONS

-1-

I.C. No. 2006-509079

health insurance was provided as a benefit of Patrick Williams employment. Patrick Williams did not choose to work for the employer because he had a health insurance policy nor did he choose to quit the employer if health insurance had not been provided. The interpretation of the word "benefit" can be found in the dictionary.

2) In Interrogatory No. 2 Blue Cross asks if Patrick Williams' employer paid any portion of the premium for a policy to Blue Cross. Patrick Williams does not know what amount his employer paid, if any, for any premium to Blue Cross. Since Blue Cross billed Patrick Williams' employer it has this information. It should look at its records.

3) In Interrogatory No. 3 Blue Cross asks whether medical bills paid by Blue Cross and claimed by its subrogated interest were incurred in treatment of an industrial injury Williams claimed to have sustained while in the employ of his employer. It further asked him to ask him to identify which medical bills paid by Blue Cross were claimed. Mr. Williams' claim before the Industrial Commission was never litigated. The Industrial Commission never entered any determination as to what bills were incurred by Petitioner related to his industrial injury. In his answer he referred Blue Cross to statements of billing and pleadings filed with the Industrial Commission. There are no separate letters or demand for payment made by Williams during

the litigation of his workman compensation claim. Blue Cross can certainly argue that all medical expense claimed by Williams was related to his industrial injury. It is not for Williams to make the case for Blue Cross. Blue Cross must prove what expense was related just as Claimant would have been required to if the matter had been tried. The fact that Williams did not segregate out specific items of expense does not justify a sanction or justify an answer beyond that which has been given. The pleadings and documents contained in the Industrial Commission file speak for themselves.

It is true that a letter was sent State Insurance Fund which described medical expense claimed by Williams exceeding \$60,000.00. There was never any statement made in correspondence to State Insurance Fund that Petitioner's medical expense had been paid by Blue Cross. Blue Cross can argue that the summary is expense they paid related to Williams' industrial injury. However, again, State Insurance Fund denied liability for the claim, disputed all medical expense and, in fact, did not pay the medical expense that Blue Cross paid. There was never any determination by the Industrial Commission that State Insurance Fund owed Patrick Williams any medical expense. The mere fact that Blue Cross wants to argue to this Commission that because Williams filed a workman compensation claim it is entitled to be reimbursed out of any amounts he received pursuant to a lump sum

agreement does not alter the fact that there is absolutely no determination by the Industrial Commission that any of Petitioner's medical expense was related to his industrial injury. The matter would be different if the case had proceeded to hearing and an Order of the Commission had entered with a finding of specificity as to what medical expense was related to Williams' industrial injury.

Mr. Williams' answers are neither evasive nor false. He provided what information he has. Blue Cross can argue the interpretation of that evidence in any manner they like before this Commission in the present proceeding.

Petitioner requests oral argument on Respondent's motion.

DATED this 9th day of March, 2009.



JOSEPH JARZABEK

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing, was mailed, by regular mail, postage paid, addressed to:

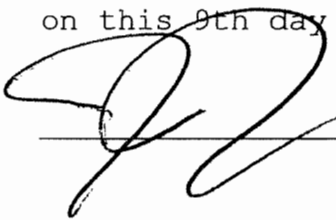
Timothy C. Walton
Chasan & Walton, LLC
P.O. Box 1069
Boise, Idaho 83701

Ronald D. Coston
State Insurance Fund
P.O. Box 83720
Boise, ID 83720-0044

and served by facsimile transmission to:

Industrial Commission at 208-332-7558
Mr. Walton at 208-345-0288 and
Mr. Coston at 208-332-2213

on this 9th day of March, 2009.



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INDUSTRIAL COMMISSION

Attorneys for Respondent

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

PATRICK W. WILLIAMS,	)	I.C. No. 2006-509079
)	
Petitioner,	)	Reply Brief to Blue Cross'
vs.	)	Motion for Sanctions
)	
BLUE CROSS OF IDAHO,)	
)	
Respondent.)	

Williams' Response Brief Was Not Timely Filed.

Blue Cross' Motion for Sanctions was filed February 9, 2009. Williams' response was due fourteen days later, February 23, 2009. JRP 3 (E) (2). Williams brief was filed two weeks late, on March 9, 2009. This Tribunal should disregard Williams' response brief and grant Blue Cross' requested sanctions.

Williams has acknowledged that the Blue Cross Health Insurance Policy Was Provided to Williams as a Benefit of His Employment, and That the Employer Paid Some Portion of the Blue Cross Premium.

Interrogatory No. 1 asked Williams to acknowledge that the Blue Cross policy was provided to Williams as a benefit of his employment. While Williams

acknowledged he had a Blue Cross policy, his answer did not acknowledge that the policy was provided to him by his employer. Rather, the answer merely acknowledges that Williams had a policy while employed with the employer (leaving unanswered, for example, the question of whether Williams' procured the policy privately, and not through his employment).

In his Response Brief, however, Williams' acknowledges that "Blue Cross had a contract of insurance with (Williams') employer". Williams response brief, p. 1.

Similarly, Interrogatory No. 2 asked Williams to acknowledge that the employer paid some portion of the Blue Cross premium. While Williams' answer to the interrogatory failed to acknowledge that the employer paid some portion of the premium, in his response brief Williams acknowledges that Blue Cross billed the employer for the premium.

Thus Williams acknowledges that the policy was provided as a benefit of his employment and that the employer was responsible for payment of the insurance premium.

Therefore by entering a finding that the policy was provided as a benefit of Williams' employment, and that the policy premium was paid by the employer this Tribunal is doing nothing more than establishing the facts that are not subject to any legitimate dispute.

**Williams Has Acknowledged That He Claimed that the
Medial Bills Which Comprise Blue Cross' Subrogated
Interest Were Incurred in Treatment of Williams'
Industrial Injury; Because Williams' Discovery
Responses Continue to Be Evasive, this Tribunal Should
Enter Its Order So Holding.**

The evidence that Blue Cross paid for medical expenses which Williams claimed were incurred in treatment of his industrial injury is overwhelming. Williams' counsel submitted a letter to the surety claiming Williams incurred \$59,060.83 in medical bills in treatment of Williams' industrial injury (when in fact Williams' medical bills only totaled \$31,195.14).

Every medical expense included in the Blue Cross subrogation itemization is also included in Williams' **"Medical Expense Summary for Patrick Williams Date of Injury: April 11, 2006"**. See Blue Cross' Memorandum in Support of Motion for Sanctions, p. 5, and the evidence recited therein.

Yet Williams refused to admit, and Williams continues to refuse to admit that Williams **claimed** these medical expenses were incurred in treatment of his industrial injury.

Rather Williams argues that because his case was not litigated to a conclusion, Williams is not required to acknowledge that he **claimed** that the medical bills paid by Blue Cross were incurred in treatment of his industrial injury. Williams' Response Brief, p. 2. In fact, in that brief Williams says,

"It is not for Williams to make the case for Blue Cross. Blue Cross must prove what expense was related just as claimant would have been required to if the matter had been tried." Williams' Response Brief, p. 3.

Williams mis-reads the law. A similar argument was raised by counsel in Lester v. Salvino, 141 Idaho 937 (Ct. App. 2005). In that case (a civil claim for injuries caused by a drunk driver), Plaintiff asked Defendant to admit he blew a .13 and a .14 on the blood alcohol test, and that Defendant pleaded guilty to a DUI charge in connection with the accident. Defendant repeatedly denied the truth of these matters, saying, "These defendants intend to put the plaintiff to his proof, which is a sufficient basis for the denials." 141 Idaho, at 938.

Ultimately, the trial court entered sanctions against the Defendant's attorney for giving evasive discovery responses, and Defendant appealed. The sanctions were upheld on appeal. The Idaho Appellate Court noted that "a civil litigant may be compelled, by the rules of discovery, to divulge unprivileged information that will aid his or her opponent." 141 Idaho, at 940.

While one can understand why Williams does not want to acknowledge that Williams claimed that the medical bills paid by Blue Cross were for medical care incurred in treatment of the industrial injury, Williams can not be allowed to avoid answering the question, just because he doesn't like the answer.

Williams wants it both ways. When litigating his claim against the surety, Williams claimed the medical bills paid by Blue Cross were for treatment of his industrial injury. Now that that fact hurts Williams (in that it obligates him to repay Blue Cross), Williams refuses to admit the position he so obviously took in the underlying litigation. Ultimately, Blue Cross will establish that Williams is estopped from taking such inconsistent positions. To allow Williams to take such

inconsistent positions would make a mockery of our system of justice, and would allow Williams to turn our system of justice into a "game".

However, the question at this stage is not whether Williams is estopped to take such a position. The question is whether Williams should be sanctioned, **after** an Order to Compel has been entered against Williams, for his refusal to properly respond to discovery.

In the Lester case (supra) cited above, the attorney who was sanctioned argued that he was not compelled to admit the requested facts because (he argued) the information sought would not be admissible at trial. The Appellate Court quickly disposed of that argument, noting that the test isn't whether the information sought is admissible, but rather whether the information sought is reasonably calculated to lead to the discovery of admissible evidence.

The Appellate Court went on to state that, "The discovery rules require a defendant's answer to be responsive, full, complete and unequivocal." 141 Idaho, at 941.

In his reply brief, Williams counsel is guilty of the same sin as sanctioned counsel in the Lester (supra) case. Williams admits he claimed medical bills of \$60,000.00 in treatment of his industrial injury (Brief, p. 3), but Williams then argues that he is not required to acknowledge that he **claimed** that the medical bills paid by Blue Cross were related to his industrial injury because the surety disputed the medical bills, and because the Industrial Commission never determined if the surety owed the bills.

Williams misses the point.

Williams is attempting to argue the merits of the case, when in fact the issue is whether the requested information is discoverable. As Lester (supra) teaches, the question isn't whether the information Blue Cross seeks is admissible or dispositive of the issues in this case; the question is whether Williams' answer could lead to the discovery of admissible evidence.

Blue Cross' Interrogatory No. 3 sought relevant information. The answer is obvious (Blue Cross **did** pay bills which Williams claimed were incurred in treatment of his industrial injury). By entering its order granting Blue Cross' requested sanction, the Industrial Commission will merely be determining a fact which is beyond dispute.

This is not a game. It is the search for the truth. Williams must own up to the claims he advanced in the underlying litigation.

CONCLUSION

Blue Cross requests that this Tribunal conclude that the Blue Cross policy was provided as a benefit of Williams' employment with the insurer, and that the employer paid "some portion" of Williams' premium for that coverage. That finding will invoke ERISA law, which law will come into play in deciding this case.


Blue Cross further requests that this Tribunal hold that the bills paid by Blue Cross were bills which Williams claimed in the underlying litigation were incurred in treatment of the industrial injury.

It is obvious that these simple facts are true. Williams has never attempted to deny the truth of these facts. Rather, Williams has cleverly attempted to avoid giving direct responses to the questions.

These questions were posed to Williams nearly six months ago. Williams has delayed resolution of this declaratory judgment action long enough. Blue Cross requests that the requested sanctions (which in reality are not sanctions, but merely a recognition of the true facts applicable to this case) be entered by this tribunal against Williams.

Dated this 10 day of March, 2009.

CHASAN & WALTON LLC


Timothy C. Walton
Attorneys for Blue Cross of Idaho

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 10 day of March, 2009, a true and correct copy of the above and foregoing document was delivered as indicated below to:

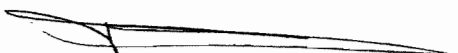
Ronald D. Coston
State Insurance Fund
P. O. Box 83720
Boise, ID 83720-0044

☒ U.S. Mail
☐ Hand Delivery
☐ Overnight Courier
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Elsaesser Harzabek Anderson
Marks Elliott & McHugh
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Sandpoint, ID 83864

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☐ Overnight Courier
☐ Facsimile No.: (208) 263-0759

CHASAN & WALTON, LLC


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Attorneys for Blue Cross of Idaho

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FILED
 APR - 1 2009
 INDUSTRIAL COMMISSION

BEFORE THE INDUSTRIAL COMMISSION, STATE OF IDAHO

PATRICK W. WILLIAMS,	)	I.C. No. 2006-509079
)	
Petitioner,	)	PETITIONER'S RESPONSE TO
	)	RESPONDENT'S BLUE CROSS'
-vs-	)	MOTIONS REGARDING DISCOVERY,
	)	ARGUMENT RELATING TO ERISA
BLUE CROSS OF IDAHO,	)	AND REQUEST FOR ORAL ARGUMENT
	)	WITH A COURT REPORTER PRESENT
Respondent.)	
)	

COMES NOW the Petitioner, Patrick Williams, by and through his attorney, Joseph Jarzabek, and in response to the various pleadings filed by Respondent states as follows:

1) Petitioner is informed and believes that Claimant's employer did not employ a sufficient number of employees to have Claimant's employment fall within ERISA. Petitioner believes ERISA is not applicable to the present proceeding. To the extent Respondent argues otherwise it has not made a showing that

PETITIONER'S RESPONSES TO
 RESPONDENT'S MOTIONS REGARDING
 DISCOVERY, ARGUMENT RELATING TO
 ERISA AND REQUEST FOR ORAL ARGUMENT
 WITH A COURT REPORTER PRESENT

-1-

I.C. No. 2006-509079

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INDUSTRIAL COMMISSION

BEFORE THE INDUSTRIAL COMMISSION, STATE OF IDAHO

PATRICK W. WILLIAMS,)	I.C. No. 2006-509079
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Petitioner,)	PETITIONER'S RESPONSE TO
)	RESPONDENT'S BLUE CROSS'
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)	WITH A COURT REPORTER PRESENT
Respondent.)	
_____)	

COMES NOW the Petitioner, Patrick Williams, by and through his attorney, Joseph Jarzabek, and in response to the various pleadings filed by Respondent states as follows:

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PETITIONER'S RESPONSES TO
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-1- I.C. No. 2006-509079

Petitioner's employer provided benefits that fall within ERISA.

2) The pleadings filed before the Industrial Commission and the original Complaint filed by Petitioner are self-explanatory. There was never a determination made by the Industrial Commission as to what medical expense was related to Petitioner's two injuries. The burden is on Respondent to show that Plaintiff would have prevailed on his claim against State Insurance Fund.

3) In its recent decision in *Neel v. Western Construction, Inc.*, and *Advantage Workers Compensation Insurance Co.*, issued March 5, 2009, the Supreme Court of the State of Idaho addressed the issue of medical expense incurred by a claimant on a denied claim. In *Neel* the Court pointed out IDAPA regulations apply only to claims deemed compensable by the Industrial Commission.

The claim of Patrick W. Williams was never deemed compensable by the Industrial Commission. It never determined he was entitled to payment for medical expense related to his injury. Thus, any claim by Respondent in this matter fails. For Respondent to prevail it would have to establish Claimant was awarded medical expense in a specific amount due specific providers by the Industrial Commission. Nowhere in the lump sum agreement is such an award made. There is no order of the Industrial Commission awarding Claimant medical expense.

PETITIONER'S RESPONSES TO
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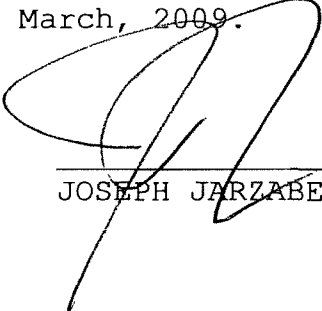
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I.C. No. 2006-509079

Any argument by Respondent that it is entitled to reimbursement because of ERISA or because of a contract of insurance with Petitioner's employer fails. The statute is clear; all workman compensation proceeds are exempt from all creditor claims. Respondent's arguments are without merit. A copy of the Neel decision is attached.

Petitioner requests oral argument on Respondent's motions and requests a court reporter be present during said argument so statements by parties' counsel can be prepared in transcript form to assist the Idaho Supreme Court with its determination on issues raised on appeal by the parties.

DATED this 31th day of March, 2009.



JOSEPH JARZABEK

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing, was mailed, by regular mail, postage paid, addressed to:

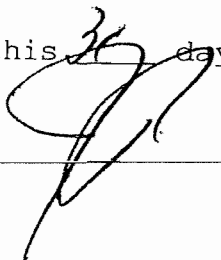
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P.O. Box 83720
Boise, ID 83720-0044

and served by facsimile transmission to:

Industrial Commission at 208-332-7558
Mr. Walton at 208-345-0288 and
Mr. Coston at 208-332-2213

on this 26 day of MARCH, 2009.

A handwritten signature, likely of the certifier, is written over a horizontal line.

IN THE SUPREME COURT OF THE STATE OF IDAHO

Docket No. 34891

STEPHEN R. NEEL,

Claimant-Respondent,

v.

WESTERN CONSTRUCTION, INC.,
Employer and ADVANTAGE
WORKERS COMPENSATION
INSURANCE CO., Surety,

Respondents-Appellants.

Boise, December 2008 Term

2009 Opinion No. 35

Filed: March 5, 2009

Stephen W. Kenyon, Clerk.

Appeal from the Industrial Commission of the State of Idaho.

The decision of the Industrial Commission is affirmed in part, reversed in part and remanded for further proceedings consistent with this Opinion. The Commission's award of attorney fees to Mr. Neel is vacated. No attorney fees are awarded on appeal. Costs are awarded to respondent.

Bowen & Bailey, LLP, Boise, for appellant. Daniel Bowen argued.

Monroe Law Office, Boise, for respondent. Darin Monroe argued.

W. JONES, Justice

NATURE OF CASE

This is an appeal from an Industrial Commission (the Commission) order requiring a workers' compensation surety to pay the full amount of a claimant's medical bills, rather than the reduced amount determined to be reasonable by a third party reviewer. We affirm in part, reverse in part, and remand for further proceedings consistent with this opinion.

FACTUAL AND PROCEDURAL BACKGROUND

Stephen Neel (Mr. Neel) brought a workers' compensation claim against Western Construction, Inc. and its workers' compensation surety, Advantage Workers Compensation

Insurance Co. (collectively Surety), for an injury he sustained in an industrial accident that occurred during the course of his employment. The accident occurred on September 14, 2005. Mr. Neel first filed a claim with the Commission on October 13, 2005. Surety initially denied Mr. Neel's workers' compensation claim. Following a hearing, the Commission found in favor of Mr. Neel. On June 8, 2007, the Commission ordered Surety to compensate Mr. Neel for his injuries.

Mr. Neel submitted invoices in the amount of \$100,712.71 to Surety for payment. Mr. Neel claims some of the medical bills submitted were already paid by Mr. Neel's non-industrial medical insurance while others went unpaid due to the expiration of said insurance. The record is bereft of any evidence supporting Mr. Neel's claim that any of his medical bills went unpaid.

Surety followed its usual procedure and reviewed the medical bills for reasonableness under the workers' compensation regulatory scheme. Based on its review, Surety tendered \$92,072.71 as full payment for the medical benefits awarded to Mr. Neel.¹ Along with payment, Surety provided a breakdown of what it considered to be reasonable charges for the medical services provided to Mr. Neel under the workers' compensation regulations.

Upon receiving a reduced payment for his medical bills, Mr. Neel filed a motion requesting the Commission to order Surety to pay Mr. Neel the full invoiced amount of the bills. On December 11, 2007, the Commission held that because Surety had initially denied the claim, it could not use the workers' compensation regulatory scheme to reduce Mr. Neel's bills and ordered Surety to pay the full invoiced amount of the medical bills. The Commission also awarded attorney fees to Mr. Neel because it found Surety's denial of full reimbursement for Mr. Neel's medical invoices to be unreasonable. Surety appeals from the Commission's decision as to the amount Surety owes to Mr. Neel for the medical costs he incurred. Surety also appeals the Commission's award of attorney fees to Mr. Neel.

ISSUES ON APPEAL

1. Can a surety, having denied a claim subsequently determined to be compensable by the Industrial Commission, review a claimant's medical bills under the workers' compensation regulations to determine whether such medical bills are reasonable?
2. Did the Industrial Commission err in awarding attorney fees to Mr. Neel?

¹ Bills totaling \$1,920.00 were inadvertently not provided to Surety by Mr. Neel, but that is not at issue here.

STANDARD OF REVIEW

This Court exercises free review over the Commission's legal conclusions but does not disturb factual findings that are supported by substantial and competent evidence. *Arel v. T & L Enterprises, Inc.*, 146 Idaho 29, ___, 189 P.3d 1149, 1151 (2008) (citing *Ewins v. Allied Sec.*, 138 Idaho 343, 346, 63 P.3d 469, 472 (2003)).

ANALYSIS

A surety that initially denies a claim may not review for reasonableness a claimant's medical bills that were incurred prior to the time that the claim was deemed compensable, but a surety may review for reasonableness medical bills that were incurred after the claim was deemed compensable.

There is no controlling Idaho case law authority precluding a surety from reviewing for reasonableness a compensable claim that it initially denied. The workers' compensation regulatory scheme is also silent on this issue. The Commission has historically held that when a claim is initially denied and later found to be compensable, a surety is responsible to pay the full amount of invoices for medical services that are related to the worker's industrial injuries and such invoices may not be reviewed for reasonableness. However, this Court has not yet determined whether a reasonableness review is permitted when a surety initially denies a claim, the claimant is then required to enter into private contractual agreements for medical care, and the claim is thereafter deemed compensable by the Commission. Thus, this is a case of first impression.

Surety argues it should be permitted to review medical bills for reasonableness that are submitted to it for payment of compensable claims, regardless of whether it originally denied a claim or not. They argue that the policy against balance billing² applies in cases that were initially accepted or denied by the surety and such policy prohibits health care providers from billing in excess of the Commission's regulatory definition of what is a reasonable charge for medical treatment. Surety contends all workers' compensation claims should be subject to the same scrutiny for medical bills, thereby preventing a two-tiered system for medical

² "Balance billing" means charging, billing, or otherwise attempting to collect directly from an injured employee payment for medical services in excess of amounts allowable in compensable claims. I.C. § 72-102(2).

reimbursement that would depend upon whether a claim is accepted at the outset or whether it is accepted after the Commission deems a claim compensable.

Mr. Neel argues that when Surety denied his workers' compensation claim, he was forced to enter into private contractual agreements with his medical providers, for which he is contractually obligated to pay the full amount billed, and therefore Surety should be compelled to pay for the full invoiced amount of the medical bills he incurred. Mr. Neel claims that his non-industrial medical insurance paid for part of his medical treatment, but a portion of his treatment was provided at a time when Mr. Neel was uninsured due to the expiration of such medical insurance, leaving him with an unfulfilled contractual obligation. Mr. Neel contends that not requiring Surety to pay the full invoiced amount is analogous to balance billing because he would owe money to the medical providers beyond the amount he received from Surety.³

The workers' compensation system is comparable to the system used by private insurers in which they enter into agreements with health care providers for contractual adjustments of the provider's bills. The provider then agrees that it will not seek to recover the contractually adjusted amount from the insured. In 2006, the legislature added a similar feature to the Workers' Compensation Law to clarify that billing injured workers in amounts in excess of the pertinent regulations is not permitted. I.C. § 72-432(1) requires medical providers to accept as full payment of their bill the amount determined by the workers' compensation surety as the "reasonable" amount of the bill pursuant to IDAPA regulations. I.C. § 72-423(6), which prevents medical providers from collecting any balance remaining from any injured worker, states: "No provider shall engage in balance billing."

The question presented here is whether a surety that initially denies a claim later determined to be compensable should be forever barred from reviewing for reasonableness medical expenses incurred on that claim. Mr. Neel argues for that proposition, relying heavily upon imprecisely drafted language in *St. Alphonsus Reg'l Med. Ctr. v. Edmondson*, 130 Idaho 108, 937 P.2d 420 (1997). We now take the opportunity to clarify the imprecise language in that opinion, which states:

The provider contends that the Commission's administrative regulations concerning medical expenses support its right to direct payment by the employer and the surety. These regulations, IDAPA 17.02.08.031 and -.032, refer, however, to the circumstance where "the Payor acknowledges liability for the claim."

³ The record on appeal does not show how much, if anything, Mr. Neel is left owing.

IDAPA 17.02.00.032.04. By their own terms, *these regulation[s] do not apply to circumstances where the employer and the surety denied liability for the claim, as in the present case.*

Edmondson, 130 Idaho at 111, 937 P.2d at 423 (emphasis added). When read in context, it is clear that this language in *Edmondson* stands only for the proposition that when a surety initially denies a claim, as a practical matter it will not be subject to the rule requiring a payor to submit payment within 30 days of receipt of a bill because the compensability of such claim is contested and will not likely be resolved within that 30 day time limit. In consideration of the Court's reference to the entire regulatory scheme contained in "IDAPA 17.02.08.031 and -.032," it is understandable that one could interpret what was intended to be a narrow statement much broader than the scope of what was contemplated. However, this Court did not intend such a broad interpretation. Moreover, the issue presented to this Court in *Edmondson* was whether providers are entitled to direct payment from the surety for medical expenses, which is not on point with the issue before the Court today. Mr. Neel's assertion that the IDAPA rules are inapposite where the employer and surety initially deny liability for a claim later deemed compensable is incorrect.

The IDAPA rules apply in all cases where a claim is deemed compensable. Even though medical expenses incurred on a claim after it is initially denied fall outside the purview of the Workers' Compensation Law, there is no good reason that the Workers' Compensation Law should not apply to medical expenses incurred after the claim is deemed compensable. When an injured worker seeks medical treatment, and knows that his claim has been denied, he/she will most likely inform the physician that the case is not a workers' compensation claim and will either rely on his/her private insurance or inform the provider that there is no insurance. Under those circumstances, the provider is justified in assuming that it is not barred by any contractual adjustment or workers' compensation regulations from charging its usual and customary charge. In those cases, the injured worker is potentially liable for the entire charge because there is no prohibition against balance billing. When, however, the claim has been held to be compensable, the injured worker can inform the provider that his case is a workers' compensation claim, thereby notifying the provider that the Workers' Compensation Law is applicable to its charges. When the injury has been accepted as a compensable claim, the Workers' Compensation Law

operates to limit the provider's charge and there is no justification for requiring the Surety after accepting the claim to pay more than the Workers' Compensation Law allows.

The parties in this case argue for a resolution at opposite ends of a spectrum; Mr. Neel contends Surety should not be permitted to review any of his invoices for reasonableness, whereas Surety assert they should be permitted to review all of Mr. Neel's invoices for reasonableness. In the interest of fairness, and to avoid awarding unearned incentives or windfalls to sureties or claimants, we construct a middle-ground resolution that takes into account the policy behind the Workers' Compensation Law.

Thus, we hold that sureties, having denied a claim subsequently deemed compensable by the Commission, are only permitted to review a claimant's medical bills incurred after the claim is deemed compensable to determine whether such bills are reasonable in accordance with the workers' compensation regulatory scheme.⁴ Any medical bills incurred during the time from when the accident occurred to the time when the claim was deemed compensable fall outside the workers' compensation regulatory scheme and may not be reviewed for reasonableness and must be paid in full by the surety.

Accordingly, Surety is obligated to pay Mr. Neel the full invoiced amount for all medical bills he incurred for his industrial accident prior to June 8, 2007, the date that his claim was deemed compensable by the Commission. Surety is permitted to review for reasonableness and reduce payment in accordance with the workers' compensation regulations for all of Mr. Neel's medical bills that were incurred on June 8, 2007 and later. The record shows that Mr. Neel incurred medical bills in the amount of \$100,712.71, but it does not reflect which portion of this amount was incurred prior to the Commission deeming his claim compensable. Accordingly, we remand to the Commission to enter findings as to the amount of medical bills that Mr. Neel incurred prior to the claim being deemed compensable.

The Commission's award of attorney fees to Mr. Neel is vacated.

⁴ In 1992, the Commission promulgated a rule setting forth acceptable charges for medical services under the Workers' Compensation Law as those that were "reasonable," which was defined as "usual and customary" charges. See IDAPA 17.02.08.031.01-.02 (1992) (amended 2006). As of April 1, 2006, the Commission adopted a fee schedule explicating reasonable charges for medical services. See IDAPA 17.02.08.031.02 (2006) (amended 2007). Because Mr. Neel incurred medical bills from September 2005 through at least May 2007, Surety originally reviewed Mr. Neel's medical bills for reasonableness under both the "usual and customary" framework and the fee schedule. Now that we have held Surety is only permitted to review Mr. Neel's medical bills incurred as of June 8, 2007, only the fee schedule set out in the IDAPA regulations is applicable to Surety's reasonableness review of Mr. Neel's medical bills.

Under I.C. § 72-804 and IDAPA 17.02.08.033, the Commission may award attorney fees in any proceeding if it determines that the employer or its surety has refused to pay the claimant benefits provided by law without reasonable ground. The Commission awarded attorney fees below to Mr. Neel on the basis that it was unreasonable for Surety to refuse full payment for Mr. Neel's medical bills. As noted above, the issue raised in this appeal is an issue of first impression before this Court. We cannot say it was unreasonable for Surety to take the position it did. Accordingly, we vacate the Commission's award of attorney fees. For the same reason, we decline to award any attorney fees on appeal.

CONCLUSION

We hold that when a surety initially denies an industrial accident claim which is later determined to be compensable, it is precluded from reviewing medical bills for reasonableness under the workers' compensation regulations from the time such bills are initially incurred until the claim is deemed compensable, but once the claim is deemed compensable a surety may review a claimant's medical bills incurred thereafter for reasonableness in accordance with the workers' compensation regulatory scheme. The Commission's award of attorney fees to Mr. Neel is vacated. Accordingly, we affirm in part, reverse in part, and remand for further proceedings consistent with this Opinion. We decline to award attorney fees on appeal. Costs to respondent.

Justices BURDICK, J. JONES, HORTON and Justice Pro Tem KIDWELL **CONCUR.**

RESPONDENT'S REQUEST FOR ADDITIONAL RECORD

No. 20, *See*, Agency's Record, p. 93

RESPONDENT'S REQUEST FOR ADDITIONAL RECORD

No. 21, *See*, Agency's Record, p. 104

RESPONDENT'S REQUEST FOR ADDITIONAL RECORD

No. 22, *See*, Agency's Record, p. 124

RESPONDENT'S REQUEST FOR ADDITIONAL RECORD

No. 23, *See*, Agency's Record, p. 127

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

PATRICK W. WILLIAMS,)
)
 Claimant/Petitioner,)
)
 v.)
)
 BLUE CROSS OF IDAHO,)
)
 Respondent.)
)
 _____)

IC 2006-509079
(15-000089)

ORDER ON DISCOVERY
ISSUES AND BRIEFING SCHEDULE
FILED

OCT - 1 2009

INDUSTRIAL COMMISSION

By order issued August 5, 2009, the Commission ruled that it has jurisdiction over Claimant's petition for declaratory ruling, and directed the parties to submit briefing on the remaining issue: Whether the provisions of Idaho Code § 72-802 operate to prohibit Blue Cross from asserting a claim against the proceeds of the Lump Sum Settlement Agreement approved by the Commission on or about March 21, 2008.

Respondent notified the Commission that briefing on that issue should not commence, prior to the resolution of a number of disputes arising over the adequacy of Claimant's responses to discovery requests propounded by Respondent. On September 28, 2009, the Commission held a status conference with the parties to resolve disputes over the discovery process.

In the course of that status conference, the Commission discussed the disputed interrogatories and discovery issues with the parties. The parties were able to agree on the following facts:

1. Employer (Paul Crossingham, dba AAA Plumbing) did pay some portion of the premium on the Blue Cross health insurance policy at issue.
2. The Blue Cross health insurance policy at issue was in effect during the time that Claimant was employed by Employer (Paul Crossingham, dba AAA Plumbing).

The parties were in agreement that a briefing schedule could be established, based on their agreement to the foregoing facts. Respondent indicated that he wished to submit additional evidence and affidavits to support his arguments. Claimant did not object to Respondent's proposed submission of additional evidence and affidavits and indicated that he did not anticipate submitting further evidence or affidavits on the matter.

ORDER ESTABLISHING BRIEFING SCHEDULE

Respondent shall have fourteen (14) days from the date of this order to submit their opening brief, and supporting evidence and affidavits. Petitioner shall have twenty (20) days from receipt of the opening brief to submit a responsive brief. Respondent shall have an additional ten (10) days from the receipt of the responsive brief to file a reply brief, if he wishes.

Please advise this office in writing if a reply brief will NOT be submitted.

Pursuant to a directive from the Commissioners, **three copies of all briefs shall be filed along with the original to facilitate review of cases.**

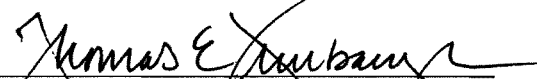
IT IS SO ORDERED.

DATED this 1st day of Oct., 2009.

INDUSTRIAL COMMISSION



R.D. Maynard, Chairman




Thomas E. Limbaugh, Commissioner



Thomas P. Baskin, Commissioner

ATTEST:

The seal of the Industrial Commission of Idaho is circular. It features the words "INDUSTRIAL COMMISSION" around the top inner edge and "STATE OF IDAHO" around the bottom inner edge. In the center, the word "SEAL" is prominently displayed. A signature, "Carol J. Haight", is written across the seal.
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of October, 2009 a true and correct copy of **Order on Discovery Issues and Briefing Schedule** was served by regular United States Mail upon each of the following persons:

JOSEPH E JARZABEK
102 SO EUCLID AVENUE STE 307
SANDPOINT ID 83864-1049

TIMOTHY C WALTON
PO BOX 1069
BOISE ID 83701-1069

cs-m/cjh

A handwritten signature in cursive script, reading "Carol J. Haight", is written over a horizontal line.

RESPONDENT'S REQUEST FOR ADDITIONAL RECORD

No. 25, 26, 27, 28, and 29, *See*, List of Exhibits Additional Records.

RESPONDENT'S REQUEST FOR ADDITIONAL RECORD

No. 30, *See*, Agency's Record, p. 143

RESPONDENT'S REQUEST FOR ADDITIONAL RECORD

No. 31, *See*, Agency's Record, p. 161

RESPONDENT'S REQUEST FOR ADDITIONAL RECORD

No. 32, *See*, Agency's Record, p. 167

RESPONDENT'S REQUEST FOR ADDITIONAL RECORD

No. 33, *See*, Agency's Record, p. 169

Timothy C. Walton ISB #2170
 Andrew M. Chasan
 CHASAN & WALTON LLC
 Park Center Pointe
 1459 Tyrell Lane
 Post Office Box 1069
 Boise, Idaho 83701-1069
 Telephone: (208) 345-3760
 Fax: (208) 345-0288
 Attorneys for Respondent

FILED
 APR 28 2010
 INDUSTRIAL COMMISSION

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

PATRICK W. WILLIAMS,	)	I.C. No. 2006-509079
)	
Petitioner/Appellant,	)	RESPONDENT'S REQUEST FOR
	)	ADDITIONAL RECORD
vs.)	
)	
BLUE CROSS OF IDAHO,)	
)	
<u>Respondent.</u>)	

**TO: THE ABOVE NAMED APPELLANT AND COUNSEL OF RECORD, AND
 THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO.**

NOTICE IS HEREBY GIVEN, that the Respondent in the above entitled proceeding hereby requests pursuant to Rule 19, I.A.R., the inclusion of the following material in the agency's record in addition to that required to be included by the I.A.R. and the Notice of Appeal:

- (1) Petitioner/Appellant's Motion for Issuance of a Subpoena, filed with the Industrial Commission on or about 7/2/08;
- (2) Petitioner/Appellant's Petition for Declaratory Relief and Exhibits A – I thereto, filed with the Industrial Commission on or about 7/2/08;
- (3) Petitioner/Appellant's Memorandum in Support of Petition for Declaratory Relief, filed with the Industrial Commission on or about 7/2/08;

Timothy C. Walton ISB #2170
Andrew M. Chasan
CHASAN & WALTON LLC
Park Center Pointe
1459 Tyrell Lane
Post Office Box 1069
Boise, Idaho 83701-1069
Telephone: (208) 345-3760
Fax: (208) 345-0288
Attorneys for Respondent

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INDUSTRIAL COMMISSION

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

PATRICK W. WILLIAMS,	)	I.C. No. 2006-509079
)	
Petitioner/Appellant,	)	RESPONDENT'S REQUEST FOR
	)	ADDITIONAL RECORD
vs.)	
)	
BLUE CROSS OF IDAHO,)	
)	
Respondent.)	

**TO: THE ABOVE NAMED APPELLANT AND COUNSEL OF RECORD, AND
THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO.**

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- (2) Petitioner/Appellant's Petition for Declaratory Relief and Exhibits A – I thereto, filed with the Industrial Commission on or about 7/2/08;
- (3) Petitioner/Appellant's Memorandum in Support of Petition for Declaratory Relief, filed with the Industrial Commission on or about 7/2/08;

- (4) Respondent's Answer to Petition for Declaratory Relief, filed with the Industrial Commission on or about 7/10/08;
- (5) Respondent's Objection to Motion for Issuance of Subpoena/Motion to Quash, filed with the Industrial Commission on or about 7/10/08;
- (6) Petitioner/Appellant's Reply to Respondent's Answer and Memorandum in Support thereof (to Petition for Declaratory Relief), filed with the Industrial Commission on or about 7/28/08;
- (7) Petitioner/Appellant's Reply to Respondent's Objection to Motion for Issuance of Subpoena/Motion to Quash and Memorandum in Support Thereof, filed with the Industrial Commission on or about 7/28/08;
- (8) Respondent's Reply Memorandum in Support of Motion to Quash Subpoena, filed with the Industrial Commission on or about 8/1/08;
- (9) Order Regarding Subpoena and Telephone Conference, filed with the Industrial Commission on or about 10/7/08;
- (10) Respondent's Motion to Compel, filed with the Industrial Commission on or about 12/4/08;
- (11) Memorandum in Support of Respondent's Motion to Compel, filed with the Industrial Commission on or about 12/4/08;
- (12) Affidavit of Timothy C. Walton in Support of Respondent's Motion to Compel and Exhibits A, B, and C thereto, filed with the Industrial Commission on or about 12/4/08;
- (13) Order Compelling Discovery, filed with the Industrial Commission on or about 1/13/09;

- (14) Respondent's Motion for Sanctions, filed with the Industrial Commission on or about 2/9/09;
- (15) Affidavit of Timothy C. Walton in Support of Motion for Sanctions, filed with the Industrial Commission on or about 2/9/09;
- (16) Respondent's Memorandum in Support of Motion for Sanctions and Exhibits 1 – 4 thereto, filed with the Industrial Commission on or about 2/9/09;
- (17) Petitioner/Appellant's "Petitioner's Response to Respondent's Motion for Sanctions," filed with the Industrial Commission on or about 3/9/09;
- (18) Respondent's Reply Brief to Blue Cross' Motion for Sanctions, filed with the Industrial Commission on or about 3/10/09;
- (19) Petitioner/Appellant's "Petitioner's Response to Respondent's {sic} Blue Cross' Motions Regarding Discovery, Argument Relating to ERISA and Request for Oral Argument with a Court Reporter Present" and the Attachment thereto, filed with the Industrial Commission on or about 3/31/09;
- (20) Blue Cross' Memorandum Regarding Does the Industrial Commission Have Jurisdiction to Decide This Declaratory Judgment Case?, filed with the Industrial Commission on or about 6/3/09;
- (21) Petitioner/Appellant's Renewed Petition for Declaratory Relief and Exhibit A thereto, filed with the Industrial Commission on or about 6/25/09;
- (22) Blue Cross' Objection to Petitioner's Renewed Petition for Declaratory Relief, filed with the Industrial Commission on or about 6/30/09;
- (23) Order on Claimant's Petition for Declaratory Relief and Briefing Schedule, filed with the Industrial Commission on or about 8/5/09;

(24) Order on Discovery Issues and Briefing Schedule, filed with the Industrial Commission on or about 10/1/09;

(25) Response Brief of Blue Cross of Idaho to (Renewed) Petition for Declaratory Relief, filed with the Industrial Commission on or about 10/14/09;

(26) Affidavit of Timothy C. Walton in support of Blue Cross of Idaho's (Response) Brief to (Renewed) Petition for Declaratory Relief and Exhibits 1, 2, and 3 thereto, filed with the Industrial Commission on or about 10/14/09;

(27) Affidavit of Debbie Lowe in Support of Blue Cross of Idaho's (Response) Brief to (Renewed) Petition for Declaratory Relief and Exhibits A – G thereto, filed with the Industrial Commission on or about 10/14/09;

(28) Petitioner/Appellant's "Petitioner's Responsive Brief" (to the opening brief of Respondent re: Renewed Petition for Declaratory Relief), filed with the Industrial Commission on or about 11/5/09;

(29) Reply Brief of Blue Cross of Idaho to (Renewed) Petition for Declaratory Relief, filed with the Industrial Commission on or about 11/12/09;

(30) Decision and Order on (Renewed) Petition for Declaratory Relief, filed with the Industrial Commission on or about 2/3/10;

(31) Petitioner/Appellant's Motion for Reconsideration, filed with the Industrial Commission on or about 2/24/10;

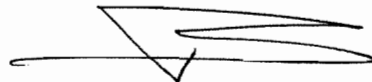
(32) Blue Cross' Response to Williams' Motion for Reconsideration, filed with the Industrial Commission on or about 2/26/10;

(33) Order Denying Reconsideration, filed with the Industrial Commission on or about 3/11/10.

Respondent believes that all of the foregoing documents are encompassed in the record itemized in Appellant's Notice of Appeal, but because said documents are not specifically itemized in said Notice of Appeal, Respondent has filed this Request for Additional Record to ensure the appellate court has before it a complete record of the proceedings before the Industrial Commission.

Dated this 28th day of April, 2010.

CHASAN & WALTON LLC



Timothy C. Walton
Attorneys for Blue Cross of Idaho

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 28th day of April, 2010, a true and correct copy
of the above and foregoing document was delivered as indicated below to:

Joseph Jarzabek
Elsaesser Harzabek Anderson
Marks Elliott & McHugh
P. O. Box 1049
Sandpoint, ID 83864

☒ U.S. Mail
☐ Hand Delivery
☐ Overnight Courier
☒ Facsimile No.: (208) 263-0759

Idaho Industrial Commission
P.O. Box 83720
Boise, ID 83720-0041

☒ U.S. Mail
☐ Hand Delivery
☐ Overnight Courier
☒ Facsimile No.: (208) 332-7558

CHASAN & WALTON, LLC

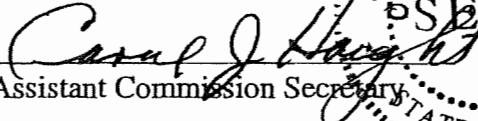



Timothy C. Walton
Attorneys for Blue Cross

CERTIFICATION ON RESPONDENT'S REQUEST

I, Carol J. Haight, the undersigned Assistant Commission Secretary of the Industrial Commission of the State of Idaho, hereby CERTIFY that the foregoing is a true and correct photocopy of Respondent's Request for Additional Record, filed April 28, 2010, and the whole thereof, in IC case number 2006-509079 for Patrick W. Williams.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Commission this 29th day of April, 2010.


Assistant Commission Secretary



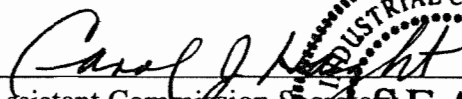
CERTIFICATION ON RESPONDENT'S REQUEST - (SC # 37623 - WILLIAMS)

SUPPLEMENTAL CERTIFICATION OF RECORD

I, Carol J. Haight, the undersigned Assistant Commission Secretary of the Industrial Commission, do hereby certify that the foregoing record contains true and correct copies of all pleadings, documents, and papers designated to be included in the Agency's Record Supreme Court No. 37623 on appeal by Rule 28(3) of the Idaho Appellate Rules and by the Notice of Appeal, pursuant to the provisions of Rule 28(b).

I further certify that all exhibits offered or admitted in this proceeding, if any, are correctly listed in the List of Exhibits. Said exhibits will be lodged with the Supreme Court upon settlement of the Reporter's Transcript and Agency's Record herein.

DATED this 19th day of May, 2010.


Assistant Commission Secretary



BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

PATRICK W. WILLIAMS,)	
)	
Claimant/Appellant,	)	SUPREME COURT NO. 37623
)	
v.)	
)	
BLUE CROSS OF IDAHO,	)	SUPPLEMENTAL
	)	NOTICE OF COMPLETION
Defendant/Respondent.)	
_____)	

TO: STEPHEN KENYON, Clerk of the Courts; and
Joseph Jarzabek, for Petitioner/Appellant; and
Timothy Walton for Defendant/Respondent.

YOU ARE HEREBY NOTIFIED that the Agency's Record was completed on this date, and,
pursuant to Rule 24(a) and Rule 27(a), Idaho Appellate Rules, copies of the same have been served
by regular U.S. mail upon each of the following:

Attorney for Claimant/Appellant:

JOSEPH JARZABEK
PO BOX 1049
SANDPOINT ID 83864

Attorney for Defendant/Respondent:

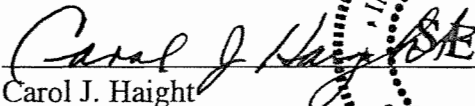
TIMOTHY C. WALTON
PO BOX 1069
BOISE ID 83701-1069

YOU ARE FURTHER NOTIFIED that, pursuant to Rule 29(a), Idaho Appellate Rules, all
parties have twenty-eight days from this date in which to file objections to the Agency's Record,
including requests for corrections, additions or deletions. In the event no objections to the Agency's

SUPPLEMENTAL NOTICE OF COMPLETION (SC # 37623 – WILLIAMS) - 1

Record are filed within the twenty-eight day period, the Reporter's Transcript and Agency's Record shall be deemed settled.

DATED this 19th day of May, 2010.


Carol J. Haight
Assistant Commission Secretary

